

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

CA FLORIDA HOLDINGS, LLC,  
Publisher of *THE PALM BEACH POST*,

Plaintiff,

v.

DAVE ARONBERG, as State Attorney of  
Palm Beach County, Florida; SHARON R.  
BOCK, as Clerk and Comptroller of Palm  
Beach County, Florida.

Defendants.

CASE NO.: 50-2019-CA-014681-XXXX-MB

DIVISION: AG

**JOINT NOTICE OF FILING SEPTEMBER 6, 2022 AND SEPTEMBER 8, 2022**  
**TRANSCRIPTS OF HEARING PROCEEDINGS**

Plaintiff, CA Florida Holdings, LLC (“Plaintiff”), publisher of *The Palm Beach Post*, and Defendant, Dave Aronberg, as State Attorney of Palm Beach County, Florida (“Defendant”) (collectively, the “Parties”), by and through undersigned counsel, and pursuant to the Court’s instructions at the conclusion of the hearing, hereby files the attached transcripts from the September 6 and September 8, 2022 hearing proceedings on Defendant’s Amended Motion for Attorneys’ Fees.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a true and accurate copy of the foregoing has been electronically filed with the Florida E-File Portal for e-service on all parties of record herein on this 4<sup>th</sup> day of October, 2022.

*/s/ Lauren Whetstone*

Lauren Whetstone

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CA Florida Holdings, L.L.C.

*vs.*

Dave Aronberg

Hearing Before:

Judge Luis Delgado

September 06, 2022

IN THE CIRCUIT COURT OF THE 15TH JUDICIAL CIRCUIT  
IN AND FOR PALM BEACH COUNTY, FLORIDA  
CASE NO. 50-2019-CA-014681-XXXX-MB AG

CA FLORIDA HOLDINGS, LLC,  
Publisher of the PALM BEACH POST,

Plaintiff,

vs.

DAVE ARONBERG, as State Attorney  
of Palm Beach County, Florida;  
SHARON R. BOCK, as Clerk and  
Comptroller of Palm Beach County,  
Florida,

Defendants.

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TRANSCRIPT OF HEARING  
PROCEEDINGS

RE: Defendant Dave Aronberg's Amended Motion for  
Attorneys' Fees

DATE TAKEN: Tuesday, September 6, 2022  
TIME: 1:42 p.m. - 4:53 p.m.  
PLACE: PALM BEACH COUNTY COURTHOUSE  
205 North Dixie Highway  
Courtroom 10D  
West Palm Beach, Florida 33401  
BEFORE: LUIS DELGADO, JR., Circuit Judge

Stenographically reported by:  
Lisa Begley, RPR, RMR

270569

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22 13 Also present: Dave Aronberg, State Attorney  
23 Defendant

24

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1 Thereupon,

2 the following proceedings began at 1:42 p.m.:

3 THE COURT: All right, please be seated.

4 All right, so we're here on the amended

5 motion for attorneys' fees.

6 Let's announce appearances.

7 MS. WHETSTONE: Good afternoon, Your Honor,

8 Lauren Whetstone. With me is Mark Bideau and

9 Gerard Buitrago and our paralegal, Jennifer

10 Thomson, from Greenberg Traurig on behalf of CA

11 Florida Holdings, the publisher of the Palm Beach

12 Post.

13 MR. WYLER: Good afternoon, Your Honor. My

14 name's Douglas Wyler. I'm here on behalf of

15 defendant, David Aronberg.

16 MR. ARONBERG: State Attorney Dave

17 Aronberg, Your Honor.

18 THE COURT: Thank you very much. It's your

19 motion.

20 MR. WYLER: Thank you, Your Honor. May I

21 approach?

22 THE COURT: (Nods head up and down.)

23 MR. WYLER: Hi, again, Your Honor. Thank

24 you. May it please the Court. As you know, we're

25 here today on Mr. Aronberg's amended motion for

1 attorney's fees. It was filed on November 9th,  
2 2020, in conjunction with his 57.105 demand that  
3 was made to the plaintiffs on June 8th, 2020.

4 That demand letter that was sent to the  
5 plaintiff's counsel was sent on the same day that  
6 Judge Marx entered her order granting the  
7 defendant's motion to dismiss Count 2 of this case  
8 with prejudice. And that motion, that 57.105  
9 demand letter asserted that the plaintiff's sole  
10 remaining count for declaratory action had no  
11 basis in fact or law pursuant to 57.105.

12 Their declaratory relief claim is rooted in  
13 Chapter 905.27 Florida Statute that governs the  
14 exceptions for the release of grand jury -- grand  
15 jury materials.

16 In our 57.105 letter, we specifically told  
17 the plaintiffs that, under 57.105(1)(a), their  
18 declaratory relief claim is unsupported by the  
19 material facts necessary to establish it and also,  
20 under 57.105(1)(b), that their declaratory relief  
21 claim is unsupported by the application of the law  
22 to those material facts:

23 There's a case, Davis v. Bailyson, it's  
24 found at 268 So.3d 762. It's a Fourth DCA case  
25 from 2019.

1       THE COURT: Give me that cite one more  
2 time.

3       MR. WYLER: Yes, sir. It's Davis v.  
4 Bailynson, B-a-i-l-y-n-s-o-n, 268 So.3d 762. It's  
5 a Fourth DCA 2019. That case says, The central  
6 purpose of 57.105 Florida Statute is and always  
7 has been to deter meritless filings and, thus,  
8 streamline the administration and the procedure of  
9 the courts. Thus, the post-1999 version of the 57  
10 -- 57.105 has expanded the circumstances where  
11 fees should be awarded and the purpose is to defer  
12 meritless filings.

13       57.105 -- The statute 57.105 provides the  
14 following language authorizing the award of  
15 attorneys' fees such as in the present litigation.  
16 It says, "Upon the Court's initiative or motion of  
17 any party, the Court shall award a reasonable  
18 attorney's fee, including prejudgment interest, to  
19 be paid to the prevailing party in equal amounts  
20 by the losing party and the losing party's  
21 attorney on any claim or defense at any time  
22 during a civil proceeding or action in which the  
23 Court finds that the losing party or the losing  
24 party's attorney knew or should have known that a  
25 claim or defense, when initially presented to the

1 Court or at any time before trial, was not  
2 supported by the material facts necessary to  
3 establish the claim or defense, or would not be  
4 supported by the application of then existing law  
5 to those material facts."

6 So, notably, the statute includes a lot of  
7 key words in there, but here, the key words that  
8 I'm focusing on is "knew or should have known."

9 Here, the plaintiff had a due diligence  
10 obligation to know what the law was when they  
11 filed the lawsuit. They should have known the  
12 ultimate facts of the case all along, and they  
13 should have known the proper legal mechanism for  
14 obtaining the records that they were seeking.

15 Nonetheless, we've informed the plaintiff  
16 multiple times throughout this case that not --  
17 that Mr. Aronberg is an improper party, not only  
18 -- because not only is it impossible for him to  
19 produce the requested records since he has no  
20 possession, custody or control over them, but also  
21 because the statutes that govern the disclosure of  
22 grand jury records clearly and unambiguously do  
23 not grant such authority or power to the state  
24 attorney.

25 Another case for you is Trust Mortgage,

1 LLC, v. Ferlanti. That's found at 193 So.3d 997.  
2 That's also a Fourth DCA case from 2016. And it  
3 can guide the Court here. This case says that, in  
4 determining an award of sanctions under  
5 Section 57.105, the trial court's findings must be  
6 based on substantial competent evidence and the  
7 trial court must make an inquiry into what the  
8 losing party knew or should have known during the  
9 fact establishment process both before and after  
10 the suit was filed.

11 So, as to the 57.105(1)(a) claim,  
12 Mr. Aronberg's position is that the newspaper  
13 should have known when they were doing their  
14 research that it was an impossibility, that he had  
15 no access, custody or control of these records,  
16 but that fact -- a bright line was drawn to that  
17 fact by Judge Marx in the June 3rd, 2020, motion  
18 to dismiss hearing. She made several statements  
19 that put the plaintiff on notice, if they weren't  
20 already.

21 And, if it would please the Court, I would  
22 like to read those onto the record. You can find  
23 these -- We've submitted a joint binder to you,  
24 and if you -- --

25 THE COURT: I have it here. Tell me where

1 I'm looking.

2 MR. WYLER: Yes, sir. If you look at J13,

3 that's the condensed version of the transcript.

4 You can find the full version if you look at J29,

5 and I can give you the Bates stamp numbers.

6 THE COURT: Tell me where to look, and I'll

7 look.

8 MR. WYLER: Absolutely, Your Honor. Look

9 at Bates stamp 1353, and that will start you --

10 THE COURT: Of what exhibit?

11 MR. WYLER: Okay, Exhibit 29 is the full

12 version. I thought that might be easier for you

13 to read it. At 1353.

14 THE COURT: You said J29.

15 MR. WYLER: Yeah, J29, and, if you look in

16 the lower left corner, there's a Bates number that

17 says CA, slash, Aronberg, and you'll see the Bates

18 stamp numbers.

19 THE COURT: What's the number?

20 MR. WYLER: 1353.

21 THE COURT: Go ahead.

22 MR. WYLER: Thank you, Your Honor. I'm

23 going to go through this transcript, and I'll

24 direct you to the actual page number of the

25 transcript itself, okay? Page 3, lines 18 -- 4

1 through 1. "Not for nothing" -- This is all Judge  
2 Marx. "Not for nothing, I think we all know that  
3 they don't have control and custody of the  
4 records."

5 Page 5, lines 17 through 19. "I think we  
6 can all agree that the state attorney doesn't have  
7 these records."

8 Page 8, line 4. "I'm asking you, how are  
9 the clerk and the state attorney the proper  
10 defendants?"

11 Page 8, line 8. "I'm puzzled by the  
12 procedural posturing of this case naming the state  
13 attorney, and, you know, I'm further stymied by  
14 the fact that you allege in your complaint that  
15 they have, particularly David Aronberg, the state  
16 attorney, that he has these records."

17 Page 8, line 18. "Okay, let's run this all  
18 the way out. Let's say you win and you get a  
19 judgment against the state attorney, Dave  
20 Aronberg. What's he supposed to do with it? He  
21 can't release the grand jury testimony. He has no  
22 authority whatsoever to do that."

23 Page 10, line 21. "And the only thing  
24 we're here today about is why should the clerk and  
25 the state attorney have to defend a civil action

1 when it's an impossibility of performance? They  
2 even -- If you were to win and get a judgment  
3 against them, they cannot give you what they don't  
4 have."

5 Page 11, line 12. "I'm simply saying, why  
6 should these two entities have to defend this  
7 lawsuit when, even down the road, if you win, they  
8 can't give you what they don't have?"

9 Page 16, line 12. "And, you know, really,  
10 I want to boil it down for me as to this:  
11 Let's take it all the way down the road. You win.  
12 You get a judgment against the clerk and the state  
13 attorney. I know there's other reasons why you  
14 might have filed it this way, but I'm just simply  
15 puzzled because I do hear what the clerk and the  
16 state attorney are saying, and that is,  
17 performance is impossible. They don't have the  
18 records and cannot, absolutely. There's not even  
19 an inch of wiggle room that they could release the  
20 records even if you got a judgment. It is solely  
21 a determination for the Court. I frankly think  
22 you know there's ways to get your records.  
23 There's ways to get confidential records, but it  
24 isn't by suing the state attorney and the clerk."  
25 Page 17, line 6. "Even assuming, arguendo,

1 that they have the records, we know they don't.  
2 You were to -- If you were to get a judgment  
3 against them, how would you expect them to  
4 perform?"

5 And then finally, on page 17, line 23.

6 "What do you mean? What do you mean? They're not  
7 trying to block it? They're saying that, despite  
8 the fact -- let's just talk about the clerk  
9 because we all know the state attorney doesn't  
10 have it."

11 I would ask the Court to enter the hearing  
12 transcript found at J29, 1353 to 1374 as Defense's  
13 Exhibit No. 1.

14 THE COURT: Any objection?

15 MS. WHETSTONE: All the joint exhibits are  
16 in evidence, so...

17 MR. WYLER: They're in evidence, but I  
18 don't know if you wanted to mark them for each  
19 person. So if I don't need to do that, then I'll  
20 dispense with that.

21 THE COURT: These joint exhibits have all  
22 been stipulated to?

23 MR. WYLER: Yes.

24 THE COURT: No need then.

25 MR. WYLER: Then I'll leave it alone.

1 Thank you, Your Honor.  
2 These statements, along with the upcoming  
3 examination of Mr. Aronberg and Mr. Mendelsohn,  
4 along with everything that's presented to the  
5 Court, it shows that these sanctions are  
6 justified, and there is no arguable basis in fact  
7 or law the way those statutes are written that  
8 Mr. Aronberg could ever provide the requested  
9 materials that he was sued for.

10 As to the 57.105(1)(b) argument,  
11 Mr. Aronberg's position here is that the  
12 newspaper, plaintiffs and their attorneys, they  
13 should have also known at the beginning when they  
14 were doing their research that those statutes  
15 precluded Mr. Aronberg from actually providing  
16 these records. That's what they sued for. They  
17 asked for Mr. Aronberg to provide these records so  
18 that they could then be disclosed to the public.  
19 But chapter -- or, Statute 905.27 states this:  
20 And this -- this argument has been presented in  
21 everything that we've said to the newspaper.

22 "When such disclosure is ordered by a Court  
23 pursuant to subsection (1) for use in a civil  
24 case, it may be disclosed to all parties to the  
25 case and to their attorneys and by the latter to

1 their legal associates and employees. However,  
2 the grand jury testimony afforded such persons by  
3 the Court can only be used in the defense or  
4 prosecution of the civil or criminal case and for  
5 no other purpose whatsoever."

6 That argument was ultimately utilized in  
7 Judge Hafele's final judgment in favor of the  
8 clerk because, on top of other things, the  
9 plaintiff admitted that they weren't seeking to  
10 use these requested records in an underlying civil  
11 or criminal case. They wanted to use it to -- for  
12 public disclosure.

13 Chapter 905.17 of the Florida statutes also  
14 applies here. This has also been made evident and  
15 very clear to the plaintiff. That statute says,  
16 in pertinent part, "The notes" -- and this is all  
17 regarding the grand jury materials -- "The notes,  
18 records and transcriptions are confidential and  
19 exempt from the provisions of Chapter 119.07 and  
20 Section 24(a), Article 1 of the State Constitution  
21 and shall be released by the clerk only on a  
22 request by a grand jury for use by the grand jury  
23 or on an order of the Court pursuant to  
24 Chapter 905.27."

25 So, like I said, these legal arguments have

1 been presented to plaintiff and its lawyers  
2 several times. It was in the 57.105 demand  
3 letter, but plaintiff dropped Mr. Aronberg from  
4 the case too late. The statute had already taken  
5 effect. There's a 21-day safe-harbor provision in  
6 that statute. And the testimony and evidence  
7 today will show that a motion for attorneys' fees  
8 was filed appropriately with that statute, and  
9 then following that, Mr. Aronberg was dropped from  
10 the case. After that, an amended motion for  
11 attorneys' fees was filed.

12 Plaintiff has an argument having to deal  
13 with the timing of when our amended motion for  
14 attorneys' fees was filed. They claim that we  
15 don't comply with the 21-day safe-harbor  
16 provision, and they use this case of Lago v Kame,  
17 Lago v Kame By Design. It's K-a-m, like Mary,  
18 K-a-m-e By Design, LLC. That's found at 120 So.3d  
19 73. It's also a Fourth DCA case from 2013.

20 So that case held that, if a party files a  
21 subsequent or amended motion for sanctions under  
22 Section 57.105 and raises an argument that was not  
23 raised in the original motion for Section 57.105  
24 sanctions, then the subsequent motion must  
25 independently comply with the 21-day safe-harbor

1 provision.

2 Okay, but the facts are different, totally  
3 different.

4 See, in the Lago case, the party who was  
5 served with the 57.105 demand never withdrew from  
6 the case. They stayed in the case to the end.  
7 The person that served the original 57.105 in  
8 Lago, after serving it, served a second one, and  
9 when they served the second 57.105 -- well, they  
10 didn't serve a second 57.105 demand letter. They  
11 filed a second motion for attorneys' fees, an  
12 amended motion for attorneys' fees without  
13 providing an additional letter, 57.105 letter  
14 before they filed the amended motion. That didn't  
15 happen in this case.

16 In this case, we filed our amended motion  
17 -- our original motion for attorneys' fees on  
18 November 9th, 2020, and then they dropped  
19 Mr. Aronberg from the case on October 21st --  
20 sorry, we filed -- I'm sorry. I apologize, Your  
21 Honor. We filed our original motion for  
22 attorneys' fees on July 1, 2020. I apologize.  
23 They dropped Mr. Aronberg from the case on  
24 October 21, 2020, and then we filed our amended  
25 motion for attorneys' fees on November 9th, 2020.

1       So the significant thing about this, Your  
2 Honor, is the 21-day safe-harbor provision is  
3 there to provide the -- provide an opportunity to  
4 reevaluate your position and change your position  
5 and withdraw your case based on the demands in the  
6 57.105.

7       There was no opportunity for the plaintiff  
8 to reevaluate and change their position. They had  
9 already made their mind up. They had already  
10 dropped Mr. Aronberg from the case. So, by asking  
11 or saying that we failed to provide the 21-day  
12 safe-harbor provision, that is misleading, Your  
13 Honor, because there was no way they could change  
14 their position with another demand letter sent to  
15 them. They had already made their decision and  
16 dropped Mr. Aronberg from the case. It was  
17 impossible for them to change their position. So  
18 he had no obligation to serve his amended motion  
19 prior to filing with the Court because he was  
20 already dropped, and a previous motion for  
21 attorneys' fees was already filed.

22       Another interesting part of that Lago case  
23 is that, in that case, the Court did find that the  
24 amended motion was filed improperly because they  
25 were still in the case, but, instead, the Court

1 picked up the originally-filed motion for  
2 attorneys' fees in that case. And we would ask  
3 Your Honor, in the alternative, should you find  
4 that, that you would rule on our original motion  
5 for attorneys' fees if it came down to it because,  
6 in the end, the arguments are the same, and the  
7 real difference in the filing of the amended  
8 motion for attorneys' fees is that it included the  
9 final tabulation of my firm's fees, as well as  
10 affidavits -- my affidavit of reasonable -- of  
11 fees and an affidavit of reasonable fees from our  
12 expert.

13 The other interesting thing here, the other  
14 argument that you'll hear plaintiff make is that  
15 Mr. Aronberg was a proper party to the case. Now,  
16 again, the clerk is the person -- the only entity  
17 that has authority to provide these records under  
18 statute, and that alone should be enough to show  
19 that Mr. Aronberg is not a proper party defendant.  
20 But Judge Hafele's final judgment actually helps  
21 out this because Judge Hafele's final judgment  
22 actually instructed plaintiff on the right way to  
23 go about trying to get the records that they were  
24 seeking. It points out that they followed --  
25 failed to follow the right procedure.

1        In that final judgment, Judge Hafele makes  
2 it clear that all that they had to do was file --  
3 follow the Rules of Judicial Administration  
4 Rule 2.42 and file a motion seeking disclosure in  
5 the underlying case, and then serve the parties to  
6 that case and anybody who might be interested in  
7 it.

8        That underlying case is State of Florida  
9 vs. Jeffrey Epstein. It's case number  
10 2006-CF-9454, and Mr. Aronberg nor his office is a  
11 party to that case. So he is an improper party.  
12 They never needed to sue him to get these records.

13        There's a big difference between suing the  
14 state attorney to get records versus filing a  
15 motion in a case that was already open.

16        Okay, now they make one other defense here  
17 under 57.105(3)(a), but that does not apply here  
18 in any sense, and I'll explain to you why. First,  
19 let me read you the statutory language.

20        This is 57.105(3)(a), and it says,  
21 "Notwithstanding subsections (1) and (2), monetary  
22 sanctions may not be awarded; (a), Under  
23 paragraph (1)(b) if the Court determines that the  
24 claim or defense was initially presented to the  
25 Court as a good faith argument for the extension,

1 modification or reversal of existing law or the  
2 establishment of new law, as it applied to the  
3 material facts, and with a reasonable expectation  
4 of success."

5 So here, the plaintiff tries to twist the  
6 language of that statute in two different ways to  
7 suit its argument. First, they entirely failed to  
8 recognize that the 57.103(a) (sic) defense applies  
9 only to claims made under 57.105(1)(b), and that  
10 has to do with the law not being correct as  
11 applied to the facts to establish the case.

12 The law here cannot be applied to the case  
13 in such a way that would support their claim as I  
14 went through with those statutes with you. That  
15 is the only scenario under (1)(b), when you're  
16 making a legal argument, not a factual argument,  
17 where you can come up with a good faith defense.  
18 So there is no good faith defense at all that  
19 applies to the factual argument that it is  
20 impossible for Mr. Aronberg to provide these  
21 materials, that he has no access, custody or  
22 control over them and he never has. That is  
23 unchanged by this defense of theirs.

24 But the interesting thing is that this  
25 defense fails in another way, too, because, if you

1 recall, their only remaining count is for  
2 declaratory relief, and when declaratory relief is  
3 asked of the Court, that is an asked for  
4 interpretation, and admittedly so by the  
5 plaintiff. Their -- They state that -- Where did  
6 I just put it? They argue that their declaratory  
7 relief claim was presented to the Court as a,  
8 quote, good faith argument for the interpretation  
9 of existing law or at least the establishment of a  
10 new law. But that doesn't work here because, if  
11 you go back to the statutory language, the  
12 statute, it's only for the extension, modification  
13 or reversal of existing law. It doesn't say  
14 anything about interpretations.

15 They did not ask for the extension of  
16 57.105 -- or, of 905.27. They didn't ask for it  
17 to be modified. They didn't ask for it to be  
18 reversed. They asked the Court to interpret it  
19 and tell them whether or not they had the ability  
20 to have the grand jury records disclosed to them.

21 That is totally -- That is an interpretation that  
22 they asked for. The Court only got to address  
23 that as to the clerk because, again, we were  
24 dropped before then.

25 So the other part of that statute talks

1 about -- it says, or creation of a new law, okay?  
2 They weren't asking to create a new law with their  
3 declaratory relief claim. The only place where  
4 they were trying to create a new statutory cause  
5 of action was in their Count 2 that was dismissed  
6 with prejudice by Judge Marx and is not at all a  
7 part of Mr. Aronberg's 57.105 demand.

8 The 57.105 demand only regards the claim  
9 for declaratory relief. So the defense under  
10 57.105(3)(a) fails as to both of Mr. Aronberg's  
11 57.105 claims.

12 I would just like to reiterate to the Court  
13 that the clerk is in actual possession of the  
14 requested records, is the only entity that is  
15 statutorily authorized to release grand jury  
16 records pursuant to a Court order, and despite  
17 plaintiff's arguments to the contrary, the record  
18 evidence will show that plaintiff and its lawyers  
19 knew or should have known at the time they were  
20 served -- at least at the time they were served  
21 with the 57.105 demand that the declaratory relief  
22 claim fails under 57.105(1)(a) because it is  
23 unsupported by the material facts necessary to  
24 establish it, and under 57.105(1)(b) because it is  
25 unsupported by the application of the law to the

1 material facts.

2 Plaintiff and its attorneys have exposed  
3 themselves to sanctions under 57.105, and  
4 Mr. Aronberg requests such relief.

5 THE COURT: Thank you.

6 MR. WYLER: Thank you, Your Honor.

7 MS. WHETSTONE: May I approach, Your Honor?

8 THE COURT: Please.

9 MS. WHETSTONE: And if I may, I'll flip  
10 over this timeline. Your Honor should have a copy  
11 in your binder.

12 THE COURT: Is that the -- Yes, give me --

13 I think I actually...

14 Is this it?

15 MS. WHETSTONE: Yes.

16 THE COURT: Whenever you're ready.

17 MS. WHETSTONE: May it please the Court.

18 The Post filed a complaint seeking access to  
19 materials from Jeffrey Epstein's grand jury  
20 investigation which was run by the Palm Beach  
21 County's former state attorney in 2006.

22 The Post felt a duty to inform the public  
23 as to how this sexual predator got the deal of the  
24 century and got off with such leniency. It is a  
25 matter of genuine public interest and concern as

1 this Court has noted.

2 The Post named two defendants, number one,  
3 the clerk of Court as the public office tasked  
4 with custody of grand jury records and, number  
5 two, the state attorney's office because it  
6 actually ran the investigation and because it is  
7 the public office tasked with protecting grand  
8 jury secrecy.

9 The state attorney's office says they  
10 should have never been named a party. Of course  
11 they had to be named a party. Not only were they  
12 the public office that conducted the investigation  
13 and presumably had possession of certain documents  
14 at some time, but, more importantly, they're the  
15 public office with the power and authority to  
16 prevent the clerk from producing grand jury  
17 documents.

18 Your Honor, we heard in the state  
19 attorney's counsel's opening that this is about  
20 custody, whether the state attorney had the  
21 documents, whether he had possession or custody of  
22 the documents, but it's not just about that. It  
23 is not just about custody. And it's -- We'll get  
24 into this, but the important point is, the state  
25 attorney's office has as its task the protection

1 of the grand jury system.

2 And it's important to remember, we're here  
3 today on a motion for 57.105 sanctions relating to  
4 the declaratory relief claim, not the statutory  
5 claim. We heard reading from the transcript  
6 before Judge Marx relating to the motion to  
7 dismiss Count 2, which was on a statutory claim  
8 under Florida Statute 905.27.

9 Of course, we are here on the declaratory  
10 relief claim that also involved constitutional law  
11 and First Amendment law, not just Florida  
12 statutory law.

13 So, starting off, we went as to the merits,  
14 but you don't even need to get there, Your Honor.

15 There are two noncurable, case dispositive  
16 jurisdictional issues which require denial of the  
17 motion without any consideration of underlying  
18 facts. And this is not just an argument. These  
19 are jurisdictional defects.

20 Number one, the Court lacks jurisdiction  
21 because the amended motion for sanctions was filed  
22 after the state attorney was dismissed as a party.  
23 And I'll indicate -- Hopefully you can hear me,  
24 but here is where the state attorney filed his  
25 amended motion for fees. It was November 2020.

1 And we dismissed -- the Post had dismissed him as  
2 a party 19 days before, on October 21st, 2020.

3 The case law is clear that the Court has no  
4 jurisdiction over a motion for sanctions after a  
5 voluntary dismissal, like the motion here. And  
6 this is case law, including Sidlosca vs. Olympus,  
7 and that is in Authorities tab -- the Authorities  
8 binder that Your Honor has at tab 26, and I'll  
9 read the case cite for the record. 276 So.3d 987.

10 It's a Third DCA 2019 case.

11 Number two, the Court also lacks  
12 jurisdiction because the amended motion, which is  
13 the only motion we are here on, violated 57.105  
14 subsection (4)'s safe-harbor notice provision  
15 which requires a motion for fees be served at  
16 least 21 days before its filed.

17 It is undisputed that the state attorney  
18 never served a copy of the amended motion for  
19 sanctions at any time before filing it on November  
20 9th. I believe Mr. Wyler also mentioned that and  
21 agreed with that in his opening. As a result, the  
22 amended motion cannot be considered. The state  
23 attorney tries to rely on a prior, what he calls,  
24 quote, unquote, place-marker motion for fees that  
25 was served on June 8th, 2020, in an attempt to get

1 around the safe-harbor requirement of 57.105. He  
2 cannot do so. First, the statute is in derogation  
3 of the common law, so it must be strictly  
4 construed.

5 More importantly, the case law says, and  
6 this is Lago vs. Kame, the case law says that the  
7 initial place-marker motion is not sufficient to  
8 comply with 57.105 because, once they filed an  
9 amended motion making new arguments, then that  
10 21-day safe-harbor notice was required anew. And,  
11 again, Lago says -- this is tab 14 in Your Honor's  
12 binder -- that they must independently comply with  
13 the 21-day safe harbor.

14 The state attorney tries to argue that,  
15 because we dismissed him prior to him filing the  
16 amended motion for fees, he's no longer required  
17 to comply with the 21-day safe harbor, but the  
18 dismissal is exactly what the 21-day safe-harbor  
19 provision is aimed at encouraging from parties in  
20 litigation.

21 There was nothing to ask us to withdraw  
22 with a 21-day notice because it had already been  
23 withdrawn, so 57.105 doesn't even apply to the  
24 situation here, and that's actually a situation  
25 that came up in the Ferere, F-e-r-e-r-e, vs. Shore

1 case, and that's tab 6 in Your Honor's binder and  
2 that's a Fourth DCA case. And in that case, the  
3 Court said that 57.105 subsection (1) was not  
4 applicable where there was no way for plaintiff's  
5 counsel to withdraw an allegation after a  
6 post-trial motion. So if 57.105 -- the  
7 safe-harbor notice was not available, then 57.105  
8 doesn't apply at all.

9 And, here, it's obvious that the amended  
10 motion made new arguments not in the first  
11 place-marker motion. And we're going to pull up  
12 the first place-marker motion and the amended  
13 motion to compare them, and those are exhibits,  
14 Joint Exhibits 14 and 25.

15 So, first, here is -- So the first  
16 place-marker motion, Exhibit 14, it's -- the  
17 motion itself is one page. There's an enclosure  
18 letter that came with it, and it's two pages. So  
19 three pages total. The motion itself says nothing  
20 except we're going to prevail, and this is your  
21 notice, we want fees.

22 But the enclosure letter says, along the  
23 lines I believe Mr. Wyler said this in his  
24 opening, that the defendant Aronberg nor the  
25 office of the state attorney is in custody or

1 control of the 2006 grand jury materials sought  
2 therein.

3 However, the first motion completely failed  
4 to address the main reason why the state attorney  
5 was a party to the lawsuit, because it could  
6 object to the clerk providing the grand jury  
7 records.

8 So now let's pull up Exhibit 25, which is  
9 the amended motion. And, Your Honor, here, so you  
10 can have an idea, here's the first motion. It's  
11 Joint Exhibit 14. Here's the amended motion.  
12 This is three pages. This is 59 pages with  
13 exhibits, 11 pages of a motion. And one page of a  
14 motion. So clearly there's new stuff in the  
15 amended motion for fees. But Mr. Wyler said they  
16 said the same arguments. That's not -- That's not  
17 true.

18 The amended motion clearly makes new  
19 arguments not in the first place-marker motion.  
20 It also references new documents, like the state  
21 attorney's motion for summary judgment and  
22 Mr. Aronberg's affidavit, both which were filed in  
23 August of 2020. So here (indicating).

24 Importantly, the amended motion also raises  
25 new positions. Just as an example -- and, Gerard,

1 if you could pull up paragraph 20 of the amended  
2 motion -- it says, "The state attorney has no  
3 objection to the clerk producing and disclosing  
4 the requested materials should the Court grant an  
5 order to that effect." And then in paragraph 25  
6 it says, "Likewise, the state attorney has no  
7 objection and never has had any objection to the  
8 clerk releasing the records sought by the  
9 plaintiff."

10 That's not true, though. As you will see  
11 in the evidence, the position that the state  
12 attorney had, quote, no objection, or, quote,  
13 never had any objection to the clerk producing  
14 grand jury materials was new, and you'll hear from  
15 Greenberg Traurig attorney Stephen Mendelsohn that  
16 this is exactly the position that the Post was  
17 trying to get and Mr. Mendelsohn was trying to get  
18 from the state attorney.

19 And you'll hear, in a June 23rd, 2020,  
20 letter Mr. Mendelsohn wrote to the state attorney,  
21 he said the state attorney is named here because  
22 they are a party that is tasked with protection of  
23 the grand jury system. You have the right to  
24 object to the release of grand jury materials.  
25 That's why you're here. And, once we had this

1 notice right here of saying they don't object, we  
2 dismissed him.

3 So he first said on the record, on  
4 October 14th, I have no objection to the  
5 production of the Epstein grand jury materials.  
6 We dismissed him October 21st.

7 So, to close out on the jurisdictional  
8 argument, the amended motion raised new arguments  
9 and cited new record evidence that did not exist  
10 at the time of the first place-marker motion. So  
11 the amended motion had independently complied with  
12 the strict 21-day safe-harbor requirement, and the  
13 state attorney failed to serve it before filing;  
14 therefore, the amended motion must be denied  
15 outright.

16 Your Honor, even if the Court -- sorry --  
17 even if the state attorney could overcome the  
18 jurisdictional defects, the evidence will show  
19 there's absolutely no basis for sanctions under  
20 the statute, and let's turn to the statute now and  
21 the standard under it as applied by the case law.

22 And this will be tab 18.

23 THE COURT: Are you talking to me, or --

24 MS. WHETSTONE: Sorry, I was indicating to  
25 Gerard.

1        And, Your Honor, here's the standard for  
2    sanctions under Florida Statute 57.105. The  
3    statute is behind it. Mr. Wyler read from that.  
4    And this is a case that interprets -- interprets  
5    this high standard, and this is the same -- I note  
6    that Davis vs. Bailyson -- I'm going to botch  
7    that name, sorry, but the case that Mr. Wyler read  
8    from has the same exact standard as to how you --  
9    you interpret whether somebody has met the  
10   requirements of 57.105. So this is a high burden.  
11   This is not a who won. This is not a prevailing  
12   party standard.

13        They have the burden of showing that the  
14   claim was so frivolous and devoid of merit both on  
15   the facts and the law as to be completely  
16   untenable, and we know the claim was not  
17   frivolous, number one, because they admitted in  
18   their answer to this very claim --  
19        And, Gerard, if you could pull up the  
20   comparison.

21        They admitted in their answer to this very  
22   claim that a good faith dispute exists between the  
23   parties. And here you're seeing -- Your Honor is  
24   seeing a comparison of Exhibit 9, which is the  
25   amended complaint, this count for declaratory

1 relief, and Exhibit 10, which is the state  
2 attorney's answer. And it says, "The Palm Beach  
3 Post has sought from defendants, and defendants --  
4 but defendants have refused to provide access to  
5 the testimony, minutes and other evidence  
6 presented in 2006 to the Palm Beach County grand  
7 jury. Indeed, defendants have each filed motions  
8 to dismiss the complaint and the relief it sought  
9 under Florida Statute Section 905.27(1).

10 Accordingly, a good faith dispute exists between  
11 the parties." And, in response, the state  
12 attorney simply said, "Admitted."

13 By that admission, they lose this motion  
14 for sanctions. They cannot now argue this claim  
15 was without merit. And, in addition, we will go  
16 through the evidence that shows the Post and  
17 Greenberg Traurig acted only in good faith and  
18 with thoughtful deliberation and that this was not  
19 a frivolous claim by any means.

20 So backing up a bit and to what we believe  
21 the evidence will show. After Epstein's arrest  
22 here in Palm Beach County in 2005, the Post began  
23 an investigation into Epstein and then what  
24 happened with the prosecution in 2006, how he got  
25 this sweetheart deal from the former state

1 attorney, to inform the public what went wrong.  
2 The Post made a number of public records  
3 requests. No luck. The limited documents they  
4 received shed no light on how Epstein got off with  
5 such leniency.

6 So, in the summer of 2019 -- we again have  
7 this timeline -- after years of investigation on  
8 Epstein, the Post brought in a team at Greenberg  
9 Traurig, including Stephen Mendelsohn here who you  
10 will hear from today, and other experienced  
11 attorneys in First Amendment and constitutional  
12 law and criminal law.

13 The Post and its attorneys spent months  
14 researching and determining how do we get these  
15 records. And you'll see the first box is from  
16 July -- July 2019 through November 2019, research  
17 and -- legal research and due diligence regarding  
18 what claims to bring and how. You will hear that  
19 Mr. Mendelsohn tried contacting the state  
20 attorney's office and requesting what was missing  
21 from the public records requests.

22 And if you want to pull up Exhibit 1.  
23 Exhibit 1 is an example of such, and it was  
24 a letter from Mr. Mendelsohn that you'll hear  
25 about where he requests specific documents. And

1 you will hear that [REDACTED] was not the only  
2 attorney to write the state attorney's office in  
3 addition to the Post. You will hear that  
4 Mr. Mendelsohn's specific records request to the  
5 state attorney's office went unanswered, and you  
6 will hear from Mr. Mendelsohn and the Post that  
7 the Post was left with no other option. So the  
8 Post filed this lawsuit seeking access to grand  
9 jury materials naming two defendants, the clerk  
10 and the state attorney.

11 And the state attorney was a necessary  
12 party to the claim here. I believe I've gone over  
13 that, but, quickly, number one, the state attorney  
14 ran -- conducted the grand jury investigation in  
15 2006. At some point, the state attorney's office  
16 had to have records. But, number two, more  
17 importantly, as the public official with  
18 responsibility and control over the grand jury  
19 system, the state attorney had to be named. As  
20 the public office with that control, the state  
21 attorney had the power to object to the clerk  
22 producing records. And this is something that the  
23 state attorney has never refuted or even  
24 addressed, and that goes hand in hand with number  
25 two, that the state attorney also had the ability

1 to request access to records from the clerk. This  
2 was not on a whim, not to harass and certainly not  
3 frivolous.

4 In doing all this background research, you  
5 will hear that Mr. Mendelsohn came across Fourth  
6 DCA and federal case law supporting the conclusion  
7 that the state attorney was a necessary party.  
8 Mr. Mendelsohn provided the state attorney with  
9 that case law and explained what we needed from  
10 the state attorney in this case. We needed the  
11 state attorney to represent that he would not  
12 object to the release of grand jury materials by  
13 the clerk if ordered by the Court. They ignored  
14 that request.

15 You will hear from Mr. Mendelsohn --  
16 Exhibit 16 -- about a June 23rd, 2020, letter he  
17 sent to the state attorney in response to the  
18 state attorney's place-marker motion for fees that  
19 was in early June. And, in this letter dated  
20 June 23rd, Mr. Mendelsohn set forth three reasons  
21 why the state attorney was named as a party.

22 Again, number one, custody; number two, they had  
23 the power to make arguments against release of  
24 grand jury materials; number three, there was  
25 nothing that prohibits the state attorney from

1 requesting copies of the clerk during and after  
2 the close of criminal prosecution.

3 So, as Mr. Mendelsohn says in this letter,  
4 even if the state attorney's office did not have  
5 possession or custody of the [REDACTED] materials,  
6 that did not end the need for his office to be a  
7 party to the declaratory relief claim. The state  
8 attorney still had the right to object to the  
9 clerk producing records. That's exactly why we  
10 included them in the case.

11 You'll hear they previously did oppose  
12 release by filing a motion to dismiss -- this is  
13 Count 2, I'm sorry, the statutory count -- and  
14 then, by filing the answer to Count 1 admitting  
15 that a good faith dispute exists as to this very  
16 claim.

17 So in the timeline, for months after  
18 Mr. Mendelsohn's letter, they -- they refused to  
19 respond, and we also reminded them on October 2nd,  
20 2020, in a later filing, what we needed. What we  
21 needed from the state attorney to release him from  
22 this case was that he would not object to the  
23 clerk's release of materials, and this was in our  
24 reply -- sorry -- response to the first  
25 place-marker motion for fees, and that was

1 Exhibit 20.

2 In that exhibit -- or, in that document,

3 [REDACTED] again raises the In re Grand Jury

4 case that you just saw in the June 23rd letter.

5 It was not until after this, on October 14th,

6 2020, that the state attorney's office finally

7 stated in a court filing they would not object to

8 the clerk's production if ordered, and he took a

9 position of neutrality. Days later, we dismissed

10 the state attorney.

11 It's important to note the dismissal of the

12 state attorney does not make him a prevailing

13 party, not even under the 57.105 sanctions

14 standard, which is much higher than a prevailing

15 party standard, but even under a regular

16 prevailing party standard, the state attorney is

17 not a prevailing party here. Just because a

18 plaintiff voluntarily dismisses a defendant does

19 not make a defendant a prevailing party. Where a

20 plaintiff gets something or a compromise out of

21 litigation, a dismissal becomes an appropriate

22 course of action as a result, then neither party

23 is the prevailing party for purposes of

24 contractual attorneys' fees. And that's pursuant

25 to the Kelly vs. BankUnited case that is -- it

1 should be in tab 38 of Your Honor's Authorities

2 binder. We sent it included in the supplement.

3 THE COURT: I think I --

4 MS. WHETSTONE: It should have been on last

5 Thursday, but --

6 THE COURT: I got it.

7 MS. WHETSTONE: As Mr. Wyler even said, the

8 purpose of 57.105 is to deter misuse of the

9 judicial system and to discourage needless

10 litigation, but here, to declare the state

11 attorney a prevailing party and entitled to

12 attorneys' fees under these facts would be

13 contrary to that goal.

14 Again, you'll hear from Mr. Mendelsohn that

15 the Post dismissed the state attorney only after

16 it got what it needed from him, changing his

17 opposition to release of grand jury records to

18 getting his affirmative statement that his office

19 did not object. And, Your Honor, the cases here

20 -- sorry -- the Court's rulings here actually

21 support this finding of no basis for sanctions

22 even further.

23 With regard to -- We heard a lot from the

24 transcript before Judge Marx from the motion to

25 dismiss Count 2. First, that was with regard to a

1 motion to dismiss Count 2, not the count we're on  
2 here today, which is Count 1 for declaratory  
3 relief.

4 It's important to note that Count 1 for  
5 declaratory relief involves issues of First  
6 Amendment and constitutional law, not just that  
7 Florida Statute 905.27.

8 In number two, respectfully, what -- what  
9 Judge Marx said during a hearing is not evidence  
10 as to whether the state attorney actually has  
11 custody or control of records. So we heard her  
12 statements on the record but no evidence about  
13 whether the state attorney did or did not have  
14 custody of the documents. And he did say in his  
15 filings he does not have custody or control of the  
16 documents, but, again, we're not just here about  
17 his own custody or control; we're here about his  
18 right as the state attorney to object to the clerk  
19 releasing grand jury records.

20 And when Judge Marx entered an order on  
21 Count 2 dismissing Count 2, that was a limited  
22 order on whether there was a private cause of  
23 action under that statute.

24 In addition, there was Judge Hafele's final  
25 judgment that was Exhibit 30 in the binder, and

1 Judge Hafele, when he entered the final judgment,  
2 that was as to the same claim that's at issue  
3 here, the declaratory relief claim as it remained  
4 against the clerk, because you'll recall the state  
5 attorney had already been dismissed as a party  
6 once they said they had no objection to the clerk  
7 releasing grand jury materials.

8 In the final judgment, Judge Hafele noted  
9 this was a case of first impression involving  
10 issues of genuine public concern. The arguments  
11 by the Post's attorneys in support of the  
12 declaratory relief claim were strong, sincere,  
13 palatable and persuasive. He commended everyone  
14 for their hard work. This is the opposite of a  
15 frivolous claim. And, while the Court ultimately  
16 did not rule in the Post's favor for declaratory  
17 relief as to the clerk, we respectfully disagree,  
18 and that decision is currently on appeal. But,  
19 more importantly, that is not the standard for  
20 57.105. Again, it is not a prevailing party  
21 standard.

22 They have not met the high burden for  
23 sanctions to prove that the fact -- the claim was  
24 so frivolous or so devoid of merit under both the  
25 facts and the law as to be completely untenable,

1 and, at the very least, this is a case -- in this  
2 case of first impression, the claim for  
3 declaratory relief was a good faith argument for  
4 extension of the law. And, according to  
5 57.105(3)(a) sanctions cannot be awarded.

6 A reminder here, too, that it was not just  
7 the statutory -- the Florida statute at issue.  
8 It's constitutional and First Amendment law at  
9 issue in the declaratory relief claim.

10 Finally, it's worth noting that, if there  
11 are no sanctions imposed, there are no fees to be  
12 paid by the state attorney's office, by  
13 Mr. Aronberg personally or by taxpayers, by  
14 anybody.

15 Mr. Wyler, who represents state attorneys  
16 across the state of Florida, had a contingency  
17 agreement with the state of Florida in this case  
18 -- sorry -- state attorney in this case and, from  
19 the outset, no fee obligations arose unless there  
20 was a Court order awarding fees. And that's  
21 Exhibit 5 in the joint exhibit binder. So the  
22 only way they were going to get fees was under a  
23 57.105 motion. However, there has never been any  
24 basis for 57.105 sanctions.

25 In closing, Your Honor, 57.105 is reserved

1 for egregious conduct. There's nothing even  
2 remotely close to that conduct that exists here.

3 The motion must be denied, and the Post  
4 respectfully requests the Court deny the amended  
5 motion for sanctions in its entirety.

6 Thank you, Your Honor.

7 THE COURT: How many witnesses are you  
8 calling?

9 MR. WYLER: Just one. Mr. Aronberg.

10 THE COURT: All right.

11 THE CLERK: Do you solemnly swear or affirm  
12 that the evidence you are about to give will be  
13 the truth, the whole truth and nothing but the  
14 truth?

15 THE WITNESS: I do.

16 Thereupon,

17 DAVID ARONBERG, STATE ATTORNEY,  
18 having been duly sworn by the Clerk of the Court,  
19 responded and testified as follows:

20 DIRECT EXAMINATION

21 BY MR. WYLER:

22 Q. Good afternoon, Mr. Aronberg.

23 Will you please introduce yourself to the  
24 Court and tell us how long you've held your position.

25 A. Good afternoon.

1 I'm David Aronberg. I go by Dave. And  
2 I've been state attorney since I was elected in 2012.

3 Q. Thank you. We're here today on your  
4 amended motion for attorneys' fees filed November 9,  
5 2020, against the plaintiff, correct?

6 A. Correct.

7 Q. And did you engage my law firm, Jacobs  
8 Scholz & Wyler, to defend you in this action?

9 A. Yes.

10 Q. I'm going to show you our Joint Exhibit 5.  
11 Do you recognize this as a copy of our firm's engagement  
12 letter with your office signed by Jeanne Howard?

13 A. Yes.

14 Q. Thank you.

15 MR. WYLER: Joint Exhibit 5, Your Honor,  
16 our firm's engagement letter, contingency fee  
17 agreement.

18 THE COURT: Thank you.

19 BY MR. WYLER:

20 Q. Mr. Aronberg, have you reviewed or are you  
21 otherwise familiar with the pleadings and filings  
22 submitted with the Court in this hearing?

23 A. I am.

24 Q. So then you're familiar with the  
25 newspaper's original summons and complaint filed against

1 you on November 14th, 2019, and then the amended  
2 complaint filed January 17, 2020?

3 A. Yes.

4 Q. And what has the newspaper sued you for?

5 A. They sued me to obtain the Jeffrey Epstein  
6 grand jury documents.

7 Q. Did they sue to just obtain them, or to  
8 also produce them and provide them to them?

9 A. They wanted me to produce them and to give  
10 it -- give those documents to them.

11 Q. And do you know what they wanted to do with  
12 those documents once they got them?

13 A. They wanted to publish the documents.

14 Q. Okay. And do you have possession, custody  
15 or control of those requested grand jury documents?

16 A. No. I've never had possession, custody or  
17 control of those documents.

18 Q. And, by control of those documents, do you  
19 mean that you couldn't -- you have no power to release  
20 them if you had them?

21 A. I have no power to release these documents.  
22 I don't have them. I've never had them. They knew I've  
23 never had them.

24 Q. But, in their complaint, didn't they allege  
25 that you and your office are, quote, in possession of the

1 documents that are the subject of this action?

2 A. That's this whole case. It's whether I had  
3 possession, custody or control of these documents.

4 That's why they sued me and my office. And I never had  
5 possession, custody or control of these documents.

6 Q. Okay.

7 MR. WYLER: Your Honor, you can find that  
8 on J9 of the amended complaint if you're looking.

9 THE COURT: Thank you.

10 MR. WYLER: You can find it at Bates stamp  
11 118.

12 BY MR. WYLER:

13 Q. Mr. Aronberg, are you familiar with the  
14 newspaper's allegation in their complaint that you,  
15 quote, have denied to the Palm Beach Post and to the  
16 public at large the grand jury materials sought to be  
17 disclosed?

18 A. I am.

19 Q. Did you ever deny the newspaper those  
20 requested materials?

21 A. From the beginning, we informed the  
22 newspaper that I've never had these documents. In our  
23 motion to dismiss, we had two arguments. The first one,  
24 the very first one was that we do not possess, have  
25 custody or control of these documents.

1           In the second argument, we then make an  
2 argument of law, because it's a motion to dismiss and we  
3 have to argue as a matter of law and we couldn't rely on  
4 the matter of fact that I didn't have the documents. So  
5 they put us in a position to argue as a matter of law  
6 that, even if we did have them, under the law we could  
7 not provide them.

8           Q. Okay.

9           A. And, since then, they've been using that as  
10 a cudgel.

11           MR. WYLER: And, Your Honor, if I can, I'll  
12 direct you to J6 and J10. Those are the two  
13 motions to dismiss that do make that assertion.

14           THE COURT: 6 and 10?

15           MR. WYLER: Yes, Your Honor. And I'll read  
16 that on the record. J6, Bates stamp 103, it says,  
17 "It is significant to note that, despite  
18 plaintiff's allegations to the contrary, Defendant  
19 Aronberg is not in custody or control of the  
20 records sought and is, therefore, not a proper  
21 party to this action."

22           And, in the second motion to dismiss, I'll  
23 read that to the Court as well. That's at J10,  
24 Bates stamp 222. "It is significant to emphasize  
25 that, despite plaintiff's allegations to the

1 contrary, Defendant Aronberg and the Office of the  
2 State Attorney for the 15th Judicial Circuit are  
3 not in custody or control of the records sought  
4 herein, and, therefore, Defendant Aronberg is not  
5 a proper party to this action. In fact, Defendant  
6 Sharon R. Bock as clerk and comptroller of Palm  
7 Beach County, Florida, admits that she is the  
8 custodian in possession of the documents that are  
9 the subject of this action."

10 BY MR. WYLER:

11 Q. Mr. Aronberg, after these initial filings,  
12 did you take any other steps to further notify the  
13 newspaper and its lawyers that your office lacks  
14 possession, custody and control of the requested records?

15 A. Yes, and that is because, when the articles  
16 came out that I was somehow stonewalling the Palm Beach  
17 Post and trying to prevent public access to these  
18 documents, I started to get calls and texts from people  
19 asking why I was doing that. I had a Facebook message  
20 that said I should resign.

21 Peter Antonacci, my predecessor down in  
22 Broward, reached out to me, wanted to know why I was  
23 covering for the grand jury -- or, for Barry Krischer or  
24 for others. And I told him I don't have the documents,  
25 because that seemed to be lost in the articles written.

1           And so I took an extraordinary step. I  
2    made a decision to create a Web portal and to release  
3    every document that my office had relating to Jeffrey  
4    Epstein and put it on the Internet, and that was -- and I  
5    have just to refresh my recollection, the dates up here  
6    -- that was January 30th.

7           Q.    Okay, great. On January 30th, did -- I'm  
8    going to show you joint Exhibit No. 12. Do you recognize  
9    this as the press release that your office released that  
10   you were just explaining?

11          A.    Yes.

12          Q.    And can you read it to the Court, please?

13          A.    This is a press release that my office put  
14    out when we established this Web portal, and it says  
15    this: "Palm Beach County State Attorney Dave Aronberg  
16    creates Web portal for public access to Jeffrey Epstein  
17    records."

18          And then there's a statement from me: "In  
19    response to a large number of requests, my office is  
20    posting online all the public records from the  
21    investigation and prosecution of Jeffrey Epstein. These  
22    records, which have all been released previously pursuant  
23    to public records requests, can be accessed through the  
24    following link," and it gives the link.

25            "The Jeffrey Epstein case occurred several

1 years and multiple state attorney administrations before  
2 I became Palm Beach County State Attorney in 2013." I  
3 was elected as -- As an aside, I was elected in 2012, but  
4 I started in 2013. "As such, I have never seen or had  
5 access to the Epstein grand jury transcripts as the state  
6 attorney's office has never possessed them. As lawsuits  
7 and investigations continue to move forward, I hope that  
8 Epstein's victims are able to achieve justice and closure  
9 they deserve."

10 Q. Thank you. Now, in addition to that press  
11 release, did you make any other steps to further notify  
12 plaintiff that you don't have the records they were  
13 seeking?

14 A. In addition to putting out that press  
15 release and sending it to the Palm Beach Post and every  
16 other media outlet in our database from around the  
17 country, I also put that press release on my Twitter page  
18 and, not only that, I pinned it so it would be the first  
19 thing on my Twitter page.

20 I also put it out on my Facebook page, and,  
21 as a result, it received national media coverage,  
22 including coverage from the Sun-Sentinel, the competitor  
23 to the Palm Beach Post. But, curiously, the one paper  
24 that did not report on this Web portal, the one paper  
25 that did not report on my releasing all the documents in

1 my possession was the Palm Beach Post.

2 To this day, they still have never  
3 acknowledged that I posted every document onto my Web  
4 page, onto my Twitter page, onto my Facebook page, onto  
5 our Web portal. To this day, even though I've had that  
6 tweet pinned to my page for months in the past, they have  
7 never acknowledged that it existed.

8 Q. Thank you, Mr. Aronberg. I'm going to show  
9 you our joint Exhibit No. 11. Do you recognize this as  
10 the Twitter post that you were just referencing?

11 A. Yes.

12 Q. And does it say the same thing as the press  
13 release?

14 A. Yes.

15 Q. Thank you.

16 A. It also looks like this could be from  
17 Facebook as well.

18 Q. Okay. All right, are you aware and  
19 familiar with the June 3rd motion to dismiss hearing and  
20 statements made on the record by Judge Marx, the ones I  
21 just read to the Court previously?

22 A. Yes.

23 Q. What did you think of those remarks?

24 MR. BIDEAU: Objection, Your Honor,  
25 irrelevant what Mr. Aronberg thinks of remarks.

1                   THE COURT: Sustained.

2 BY MR. WYLER:

3                   Q. So following those remarks from Judge Marx,  
4 do you believe that the newspaper knew or should have  
5 known that you were not in possession, custody or control  
6 of those records and that they should have dropped you  
7 from the lawsuit even then?

8                   MR. BIDEAU: Objection. Again, Your Honor,  
9 I don't know how Mr. Aronberg could know what the  
10 newspaper knew or should have known.

11                  THE COURT: So your objection is  
12 speculation. Sustained.

13                  MR. WYLER: Okay.

14                  THE COURT: All right, you know, generally,  
15 we have a jury here, but let's keep objections  
16 short. I'll answer them if I need to, or I'll ask  
17 for more.

18                  MR. BIDEAU: Okay, Your Honor.

19 BY MR. WYLER:

20                  Q. Can you -- Mr. Aronberg, can you please  
21 explain to the Court how it is impossible for you to  
22 provide these records?

23                  A. Well, first, I never had these records, so  
24 obviously it's impossible for me to provide them. I told  
25 them that. They knew that.

1           Secondly, I have no custody or control over  
2 these documents. I've never had them. They know that,  
3 which is why they now are moving the goal posts to change  
4 this whole lawsuit, this whole action from custody,  
5 possession, control, into keeping me on the sidelines so  
6 I don't object to the clerk's ability to release the  
7 documents. So it's a new -- it's a new ball game now  
8 apparently.

9           But the newspaper obviously knew that I  
10 never had these documents, that I never had custody or  
11 control over them because I repeatedly told them.

12           Q. All right. And then so, following Judge  
13 Marx's order that I just referenced on June 3rd, what  
14 action did you then direct me to take?

15           A. Well, after Judge Marx's order and I was  
16 dismissed from one of the two counts, I asked you to seek  
17 sanctions, well, to start the ball rolling, 57.105, so to  
18 send a letter that gives the 21-day notice.

19           Q. That's correct. And let me show you a copy  
20 of that letter.

21           MR. WYLER: Your Honor, if you see our J14,  
22 it's a copy of the 57.105 demand letter and the  
23 email to Mr. Mendelsohn that accompanied it, and  
24 just for a point of clarification, there is the  
25 motion for attorneys' fees at the end, but that

1       was not filed on June 8th. Pursuant to the  
2       statute, you have to wait at least 21 days, and as  
3       you'll see later, that was followed.

4           THE COURT: The way this is -- I assume  
5       this was attached to the letter?

6           MR. WYLER: It is, Your Honor. It's at  
7       Bates stamp 235, yes, Your Honor.

8 BY MR. WYLER:

9           Q. Do you recognize that, Mr. Aronberg, as a  
10      copy of the email to Mr. Mendelsohn and then the 57.105  
11      demand that we issued to the plaintiff?

12          A. Yes.

13          Q. And, in that letter, did we assert our  
14      position that their demand to produce the 2006 grand jury  
15      records, that there was no basis in fact or law?

16          A. Correct.

17          Q. Do you know if the newspaper dropped you  
18      from the lawsuit within the 21-day safe-harbor provision  
19      provided by statute 57.105?

20          A. They did not.

21          Q. But they eventually did drop you?

22          A. A long time later, they did finally drop  
23      me.

24          Q. Okay, but, before they dropped you, did we  
25      not file a motion for summary judgment?

1 A. Correct.

2 Q. And did that include an accompanying  
3 affidavit from you?

4 A. Correct.

5 Q. Let me show you a copy of that affidavit.

6 That's at J18. Do you recognize this as a copy of your  
7 affidavit?

8 A. Yes.

9 Q. Will you please read it aloud for the  
10 Court?

11 A. The entire page?

12 Q. Yep.

13 A. "My name is David (Dave) Aronberg, and I'm  
14 the State Attorney for the 15th Judicial Circuit, Palm  
15 Beach County, Florida, since 2013 and a defendant in the  
16 above-captioned matter. Plaintiff is seeking declaratory  
17 relief pursuant Florida Statute 905.21(1)(c) and the  
18 Court's inherent authority allowing plaintiff access to  
19 the testimony, minutes and other evidence presented in  
20 2006 to the Palm Beach County grand jury, the requested  
21 materials, and to use those materials for the purpose of  
22 informing the public."

23 "Despite plaintiff's above-described action  
24 for declaratory relief, neither myself nor the Office of  
25 the State Attorney for the 15th Judicial Circuit (SAO) is

1 in control, custody or possession of the required" --

2 excuse me -- " of the requested materials."

3 "As such, the declaratory relief sought by

4 the plaintiff seeks materials that are impossible for me

5 or my office to produce. To be clear, neither myself nor

6 the SAO has the legal authority to obtain and deliver the

7 requested materials. I've repeatedly made these facts

8 evident to the plaintiff and the public through not only

9 the pleadings and correspondence in this matter, but also

10 through an office press release and my public social

11 media accounts."

12 "Despite the contentions of plaintiff,

13 neither myself nor the SAO has the authority to demand

14 that the clerk grant the SAO access to grand jury

15 materials after a criminal case has concluded. Moreover,

16 during my administration, neither myself nor my office

17 has access to grand jury materials from the clerk's

18 office in this or any other instance."

19 "As provided in Section 905.17(1) Florida

20 Statutes, the clerk has sole authority and possession of

21 the requested materials, which can only be released by

22 the clerk pursuant to an order of the Court."

23 Q. Thank you. Do you know of any other

24 substantive action regarding plaintiff's claim for

25 declaratory relief after you filed your motion for

1 summary judgment?

2 A. After we filed the motion for summary  
3 judgment, we included the affidavit, and then there was a  
4 -- at some point I was dismissed, and then there was an  
5 amended motion after that.

6 Q. That's correct. And I'm going to show you  
7 J23. Do you recognize this as a copy of the notice where  
8 you were dropped as a party from the lawsuit?

9 A. Correct.

10 Q. What date is that? It's on the top, the  
11 very, very top.

12 A. This was October 21st, 2020.

13 Q. Thank you. And, after you were dismissed,  
14 are you aware -- yeah, after you were dismissed, are you  
15 aware that the Court eventually granted the clerk summary  
16 judgment in their favor, a summary judgment in favor of  
17 the clerk?

18 A. Yes.

19 Q. Okay. Just a couple more questions for  
20 you.

21 There's been some references to maybe the  
22 newspaper not just suing you just to get these records  
23 for public disclosure. Even Judge Marx said that she  
24 thought that there was something else going on. What do  
25 you think is the underlying reason here for this lawsuit?

1                   MR. BIDEAU: Objection, Your Honor,

2                   irrelevant as to what the reason is.

3                   MR. WYLER: It goes to good faith, Your

4                   Honor.

5                   THE COURT: All right, overruled.

6                   A. Look, it was clear to me from the beginning  
7                   that this whole lawsuit was a twofer for the Palm Beach  
8                   Post. Number one, they were able to try to overcome the  
9                   fact that the Miami Herald, a newspaper 90 miles away,  
10                   scooped them on the Jeffrey Epstein story, and they  
11                   wanted to catch up and be the hero of their own  
12                   narrative. And so they made themselves the center of  
13                   this whole thing by suing to get these transcripts.

14                   And, number two, they can do it on the back  
15                   of someone they have extreme dislike for, and it's no  
16                   secret in this community that the Palm Beach Post and I  
17                   have had numerous battles over the years, usually  
18                   one-sided, where the Palm Beach Post has, for the past  
19                   12 years, has attacked me, written many misleading  
20                   articles, which stems from a personal vendetta from a  
21                   leader of the Palm Beach Post, Randy Schultz, and me.

22                   And then, after he was removed from his position, his  
23                   acolytes believed that I had something to do with it, and  
24                   they -- the attacks continued.

25                   I mean, they continue even today where

1 there's a front page article about some exaggerated -- a  
2 misleading front-page article about a criminal defendant  
3 in Broward who is making claims and trying to get my  
4 ex-wife's deposition. And the Palm Beach Post, instead  
5 of writing the facts about it, sued to get the ex-wife's  
6 deposition released.

7 I mean, for years, this has been an ongoing  
8 issue between the Palm Beach Post and me, and it's not a  
9 secret. For example, when they hired a reporter to cover  
10 my office, who my office, prior to my being there,  
11 prosecuted for crack cocaine. So I was thinking maybe at  
12 some point they could find a reporter to cover our office  
13 who our office did not prosecute for crack cocaine. So  
14 this has been an ongoing thing.

15 So this whole matter stems from two things:  
16 The Palm Beach Post trying to get the Jeffrey Epstein  
17 story back, sell newspapers and to go after me, and  
18 they're able to do it. And that's why I insisted that we  
19 at least get the taxpayers some of their money back  
20 because they had to fight and pay for your legal fees to  
21 fight a lawsuit that was, in my mind, frivolous from the  
22 beginning because this newspaper knew I never had these  
23 documents, I never had control or custody. And it's very  
24 telling that now they're trying to move the goal posts  
25 and make this about something entirely different.

1 BY MR. WYLER:

2 Q. Let's talk about that, moving the goal  
3 posts. We talked earlier about the wording in the  
4 complaint against you. Do you recall the statements were  
5 that you somehow denied the Palm Beach Post and the  
6 citizens of Palm Beach County the grand jury records they  
7 were requesting? Do you recall that?

8 A. Yes.

9 Q. And now it appears that we're hearing a  
10 whole new argument from plaintiff today; is that correct?

11 A. Yes.

12 Q. And that argument, correct me if I'm wrong,  
13 is that they were fine once you said you didn't object to  
14 the records being released and that, for that reason,  
15 they dropped you; is that accurate?

16 A. Correct.

17 MR. BIDEAU: Objection, Your Honor,  
18 leading.

19 THE COURT: Sustained.

20 BY MR. WYLER:

21 Q. Can you please explain your -- your  
22 perception of how they moved the goal posts?

23 A. Look, I mean, this lawsuit from the  
24 beginning was about whether I had possession, custody,  
25 control of the Jeffrey Epstein grand jury transcripts.

1 That's a series of articles they wrote about this. They  
2 wrote a long series of articles attacking me for trying  
3 to obstruct. Those articles were misleading.

4 The fact that we're here today and now it's  
5 not about that, it's about keeping me on the sidelines so  
6 I didn't have -- that I didn't object to the clerk's  
7 production of these documents is something that I haven't  
8 heard before, and I think is so misleading because this  
9 whole thing was about the grand jury transcripts. It's  
10 not about trying to prevent me from saying something to  
11 the clerk.

12 It was clear from the beginning I never had  
13 these documents. Judge Marx made it clear on the record,  
14 and that's why we pursued these sanctions.

15 Q. Thank you. And isn't it -- isn't there a  
16 big difference between objecting to the release or  
17 intervening in the release and actually being able to  
18 release the records?

19 A. They sued me to get the records. They  
20 didn't sue me to prevent me from speaking up.

21 Q. There's nowhere in the complaint that says  
22 that they're suing to you keep you from objecting to the  
23 release?

24 A. Not only is there nothing in the complaint,  
25 there's nothing in all the articles they wrote. They

1 wanted this thing to continue, to continue to write  
2 articles. It would have been embarrassing for them to  
3 admit that they filed a frivolous lawsuit and then they  
4 had to dismiss me. So they continued these articles way  
5 past the 21-day period, and now, when they got called on  
6 it, they're trying to change the whole case into  
7 something about how they needed me to stay silent so I  
8 wouldn't tell the clerk to do something.

9 I mean, this thing was about production,  
10 custody and control of grand jury documents, and I just  
11 don't believe the Palm Beach Post should be able to  
12 change it after the fact.

13 Q. So do you believe they have an agenda  
14 against you and were intentionally targeting you when  
15 they filed this lawsuit?

16 A. They've always had an agenda against me.

17 MR. BIDEAU: Objection, Your Honor,  
18 relevance.

19 THE COURT: I think you have already  
20 covered it. So I'm going to sustain the  
21 objection. That's fine.

22 BY MR. WYLER:

23 Q. Have your friends and family been impacted  
24 by the plaintiff's agenda-driven reporting?

25 MR. BIDEAU: Again, Judge, objection,

1 relevance.

2 THE COURT: Sustained as to relevance.

3 MR. WYLER: Thank you.

4 BY MR. WYLER:

5 Q. Do you believe that plaintiff's  
6 relationship with you prevented them from accepting the  
7 ultimate fact that you have no legal right to possession,  
8 custody or control of the release of the requested grand  
9 jury records?

10 MR. BIDEAU: Objection, cumulative, Judge.

11 I think we've been over this. He asked the same  
12 question before.

13 THE COURT: We've covered this.

14 MR. WYLER: No further questions.

15 THE COURT: Cross examination.

16 MR. BIDEAU: Thank you, Judge.

17 CROSS EXAMINATION

18 BY MR. BIDEAU:

19 Q. Good afternoon, Mr. Aronberg.

20 A. Hi.

21 Q. You said a couple minutes ago to your  
22 lawyer that you filed this motion to get the taxpayers  
23 back some of their money, right?

24 A. Uh-huh.

25 Q. That's what you said? The taxpayers are

1 not out any money, are they?

2 A. It is a contingency-fee basis.

3 Q. Right, and so the answer to question is:

4 The taxpayers are not out any money, are they? You don't  
5 owe your counsel a nickel today, right?

6 A. I think that's fair to say.

7 Q. You haven't paid your counsel a nickel  
8 today, right?

9 A. We have not.

10 Q. And the only way that your counsel gets any  
11 money is if he wins this 57.105 motion, right?

12 A. That's a good point.

13 Q. So under no circumstance are the taxpayers  
14 out any money, correct?

15 A. Yeah, I guess so. You're right.

16 Q. Okay. So, when you testified a few minutes  
17 ago that you filed this motion in order to get the  
18 taxpayers back their money, that was wrong, right?

19 A. Look, the fact that our office --

20 Q. Is that right, or wrong?

21 A. Look, I have to dispute with you on that  
22 one. Look, look, the fact that our office has spent  
23 months having to deal with this frivolous lawsuit, that's  
24 taxpayer money. And, yes, so perhaps I misspoke when I  
25 said that because the money wouldn't go directly to him

1 unless we got something today. But it's clear the  
2 taxpayers are out money when you divert my attention from  
3 real business to focus on your frivolous lawsuit that has  
4 been filed for nothing more than to sell newspapers and  
5 make a profit for your client.

6 Q. So the only person involved in this lawsuit  
7 -- I haven't seen you -- Have you testified in any  
8 hearings in this case?

9 A. No.

10 Q. Have you been deposed in this case?

11 A. No.

12 Q. Okay. So the only thing you've done in  
13 this case presumably is chat with your lawyer, correct?

14 A. Are you saying our office has done nothing,  
15 has not been distracted about this case?

16 Q. I'm talking about you, Mr. Aronberg.

17 A. Oh, I've spent plenty of time about this  
18 case. I have spent way more time than I ever should have  
19 in a case that I had nothing to do with.

20 Q. Mr. Aronberg, you said that this idea that  
21 -- Well, let me back up for a second.

22 You said that you thought the Palm Beach  
23 Post brought this case for two reasons: One, they  
24 brought this case because they don't like you and they  
25 wanted to embarrass you somehow, and they brought this

1 case because they've been scooped by the Miami Herald, I

2 think you said, right?

3 A. Yes.

4 Q. On the Epstein matter. I mean, you agree

5 that an investigation into the Epstein matter and what

6 your predecessors did in the Epstein matter is a

7 legitimate matter of public interest, right?

8 A. The investigation of Jeffrey Epstein?

9 Absolutely.

10 Q. Absolutely. And the -- And the

11 investigation of what your office by your predecessor --

12 By the way, nobody has ever suggested, Mr. Aronberg, in

13 any of the pleadings filed in this case that you

14 personally were involved in whatever happened with

15 Mr. Epstein. That's not in the complaint, right?

16 There's no reference to you personally having been

17 involved. In fact, the complaint makes it very clear

18 that this was your predecessor who was involved, correct,

19 not you?

20 A. Correct.

21 Q. Now, so the pleadings we drafted didn't --

22 didn't accuse you of having done anything wrong with

23 respect to Mr. Epstein or the plea deal that got cut or

24 whatever happened with the feds, correct? We acknowledge

25 you weren't around in the pleadings that we filed in this

1 case, right?

2 A. You acknowledged that I had nothing to do  
3 with the stuff in the past, but you are accusing me of  
4 hiding grand jury transcripts that I've never possessed.

5 Q. There's nothing in the pleading that said  
6 you hid grand jury transcripts, correct? The request --  
7 The lawsuit for declaratory relief was to declare that  
8 you either turn over what you had, correct?

9 A. Then you don't read your own newspaper.

10 Q. I'm talking about the pleadings that are  
11 filed in this case. I understand that you are concerned  
12 about the press side of this. I'm concerned about the  
13 legal side, okay?

14 A. The legal side sued me to get grand jury  
15 transcripts, and the press side accused me of hiding  
16 them.

17 Q. Okay, so we can agree that the legal side,  
18 the thing we're here on in this case today, is about  
19 getting grand jury testimony, correct, getting grand jury  
20 transcripts?

21 A. Possession, custody and control, correct.

22 Q. Incidentally, when my firm first got  
23 involved -- Do you have the exhibit binder in front of  
24 you?

25 A. I do not.

1                   MR. BIDEAU: Okay. Can we get an extra  
2                   copy of it?

3                   MS. WHETSTONE: We can pull it up on the  
4                   screen.

5                   MR. BIDEAU: Exhibit 1.

6                   THE COURT: I'm sorry, what number?

7                   MR. BIDEAU: Exhibit 1, Your Honor.

8                   MS. WHETSTONE: Your Honor, may I approach  
9                   with the exhibit binder?

10                  THE COURT: Yes.

11 BY MR. BIDEAU:

12                  Q. Mr. Aronberg, it might be a little quicker  
13 if I just hand you the binder, okay? That way you don't  
14 have to turn around and look at it.

15                  A. Okay, what exhibit is it?

16                  Q. Exhibit 1.

17                  A. Okay.

18                  Q. Exhibit 1 is an August 27, 2019, letter  
19 from Mr. Mendelsohn to you, correct?

20                  A. Correct.

21                  Q. And this was a request for -- Now, prior to  
22 this, your office had received a number of public records  
23 requests from the Palm Beach Post, correct?

24                  A. About -- About this?

25                  Q. About the Jeffrey Epstein matter. All my

1 questions are about the Jeffrey Epstein matter.

2 A. Okay, yes.

3 Q. Okay, and this was the first letter you  
4 received from my office, correct? From Mr. Mendelsohn  
5 about the Jeffrey Epstein matter, right?

6 A. I don't know if this is the first letter.

7 If you say it, I assume that's true.

8 Q. And, in this letter, Mr. Mendelsohn  
9 requests a number of documents and records with respect  
10 to the grand jury matter concerning Mr. Epstein, correct?

11 A. I'd have to read it, but, yes, I'll take  
12 your --

13 Q. By the way, your office never actually  
14 responded to this particular letter, did it?

15 A. I don't know.

16 Q. And, in fact, after this letter, if you  
17 look at tab 37, which is the very last tab -- and I  
18 apologize, the binder is so big, it's hard to move  
19 around. This letter is dated of August of 2019.

20 THE COURT: What exhibit?

21 MR. BIDEAU: Exhibit 37, Your Honor.

22 MS. WHETSTONE: It's also on the screen if  
23 that's easier.

24 THE WITNESS: Maybe I can look at the  
25 screen.

1 MR. BIDEAU: You can look there, okay.

2 THE COURT: I'm going to slow you down a  
3 little bit. I can't see the writing on the screen  
4 from that far, so I'm going to flip to 37.

5 MR. BIDEAU: And, I apologize, I hate these  
6 big binders.

7 THE COURT: It's okay. I just want to see  
8 what you're talking about as you're talking about  
9 it.

10 You're right, they're not easy to navigate.

11 All right, please continue.

12 BY MR. BIDEAU:

13 Q. Exhibit 37 is an October 9th, 2019, letter  
14 and that's from Mike Grygiel, another lawyer in my  
15 office, to your office, and it's following up on  
16 Mr. Mendelsohn's October (sic) 27th letter, okay, and his  
17 September 17th letter. Do you see that?

18 A. Yes.

19 Q. Okay. And up to that point in time, we had  
20 not yet received responses to our letters, correct? Do  
21 you know?

22 A. I don't know.

23 Q. Okay. And then -- And then after that,  
24 sir, it was on January -- it was on -- it was in 2019,  
25 shortly after that, November of 2019 that we filed the

1 first lawsuit against you, correct?

2 A. Correct.

3 Q. So, after having sent your office two  
4 letters, you don't know if we ever got responses to those  
5 letters, we went and filed a lawsuit, and in that lawsuit  
6 we named you in your official capacity, correct, not a  
7 personal capacity?

8 A. Correct.

9 Q. And whenever you sue the state attorney's  
10 office, and your office gets sued for things all the  
11 time, it doesn't have anything to do with you personally,  
12 right?

13 A. Correct.

14 Q. You sue -- You sue an entity like the state  
15 attorney's office in its -- by the state attorney who is  
16 in his official capacity, correct?

17 A. Yes.

18 Q. And you talked about your original motion  
19 to dismiss, J6, so let's take a look at J6, if you want  
20 to look at Exhibit 6 in the binder, or can you look at it  
21 up there. I don't really care.

22 A. Okay.

23 Q. Let's look at the second page. On the  
24 second page, you --

25 MR. BIDEAU: Could you highlight, Gerard,

1        where it starts with, "Plaintiff has  
2        improperly..." Down at the bottom, last  
3        paragraph.

4 BY MR. BIDEAU:

5        Q. You see you indicate -- your lawyer  
6 responded by saying, "Plaintiff," that would be the Palm  
7 Beach Post, "is improperly seeking requested 2006 grand  
8 jury materials for the purpose of public disclosure  
9 pursuant to the Court's inherent authority and  
10 supervisory powers over the grand jury." Do you see  
11 that?

12        A. Yes.

13        Q. So at least at that point, you were  
14 objecting saying the Post shouldn't get these, they're  
15 not entitled to them, so that they can't -- because they  
16 want to give them out to the public, right? And that's  
17 what the sentence says.

18        A. See --

19        Q. Is that what it says?

20        A. Look, you are -- this is exactly the  
21 problem, what you guys did. You filed a lawsuit against  
22 us, and the first defense that we had was that we didn't  
23 have the documents, but because, as you know, in a motion  
24 to dismiss you have to argue as a matter of law. So the  
25 only way we could dismiss this frivolous lawsuit is to

1 argue as a matter of law. And this -- this was the legal  
2 position that says, by the way, under the law you're not  
3 entitled to these documents. And then you -- then your  
4 client then wrote all these articles saying, see, he's  
5 trying to block us, he's trying to obstruct us, without  
6 mentioning the number one defense, which was he doesn't  
7 have the documents. That could have gone a long way.  
8 That could have shown maybe some good faith if you would  
9 have done that.

10 Q. Mr. Aronberg, in connection with -- at the  
11 time of the motion to dismiss, you had filed nothing,  
12 your office had done no indication that you didn't have  
13 the documents, did you, up to this point in time? Up to  
14 this point in time. And this is only -- this is only  
15 late 2019. You hadn't filed an answer. You hadn't filed  
16 any motion.

17 A. In our motion to dismiss.

18 Q. You hadn't responded to any of our three  
19 prior letters, and the first pleadings you filed  
20 indicated that your objection was that we were improperly  
21 seeking these materials under the Court's inherent  
22 authority and supervisory powers over the grand jury for  
23 public disclosure. That was the official position filed  
24 by your lawyer, and I understand, you were taking a legal  
25 position to dismiss the lawsuit.

1       A. Correct, but also I do want to challenge  
2 one part of that. When you say that we -- we were silent  
3 over and over again about responding to your public  
4 records requests, I have spoken to -- I've spoken to the  
5 public records person in my office who believes that she  
6 did say that we didn't have the documents to everyone who  
7 has requested them.

8                    MR. BIDEAU: Your Honor, I'd move to strike  
9 as hearsay.

10                THE COURT: Sustained.

11 BY MR. BIDEAU:

12                Q. And, after you filed this motion, the Palm  
13 Beach Post filed an amended complaint, correct, and, in  
14 that amended complaint, the Post asserted two causes of  
15 action, right? One was a statutory claim, and one was a  
16 declaratory judgment claim under the First Amendment and  
17 the Court's inherent authority, correct?

18                A. Correct.

19                Q. And the motion to dismiss and the arguments  
20 in front of Judge Marx all went to the statutory claim,  
21 not to the second claim, the declaratory judgment claim,  
22 correct?

23                A. The Marx hearing was about Count 2.

24                Q. Count 2, the statutory claim, correct?

25                A. Correct.

1 Q. And, so, when we look at -- I've got the  
2 complaint here because I want to read it. The first  
3 amended complaint, which is J9, and if you take a look at  
4 J9 --

5 THE COURT: Let me stop you for one second.

6 So I'm flipping through these, but, like, for  
7 example, right there, I can't -- I can't see that.

8 MR. BIDEAU: Right, I know.

9 THE COURT: But I saw that you were able to  
10 blow up a portion of --

11 MR. BIDEAU: He is.

12 THE COURT: -- and I'm going to ask him to  
13 do that, that way I don't have to --

14 MR. BIDEAU: I'm going to ask him to blow  
15 it up so you can see it.

16 THE COURT: Thank you very much. I  
17 appreciate it.

18 BY MR. BIDEAU:

19 Q. So let's take a look here at Count 1 for  
20 declaratory relief.

21 MR. BIDEAU: Gerard, it's on page 19.

22 Okay, just blow up the Count 1 for declaratory  
23 relief, please, that section.

24 BY MR. BIDEAU:

25 Q. Then, with respect to paragraph 7, do you

1 see that one of the allegations is that the Post  
2 respectfully requests the Court declare that, pursuant to  
3 Florida Statute 905.27(1), it is entitled to access to  
4 the testimony, minutes and other evidence presented in  
5 2019 -- 2006 to the grand jury because such disclosure  
6 and access would be in furtherance of justice, and then  
7 it cites to 905.27(1)06 (sic), correct?

8 A. Yes.

9 Q. And it says, because the Post is not  
10 seeking these materials in connection with any civil or  
11 criminal case, it seeks a declaration -- In other words,  
12 it asks the Court, hey, construe this paragraph, construe  
13 the statute to allow us to give this stuff to the public  
14 because we recognize there's an interest of justice  
15 provision in that statute, correct?

16 A. Well, it is what it says it is.

17 Q. Okay. And that's what it says, right, in  
18 furtherance of justice? That's what the request was?

19 A. Again, it is what it is.

20 Q. Okay. And then paragraph 71, the Post  
21 seeks a further declaration that disclosure of the  
22 testimony, minutes and other evidence presented to the  
23 grand jury is appropriate pursuant to the Court's  
24 inherent authority over grand jury proceedings because of  
25 the exceptional public interest in this case and

1 compelling circumstances supporting transparency. Do you  
2 see that?

3 A. Yes.

4 Q. Okay, and, with respect to paragraph 71, do  
5 you know what the answer was --

6 A. No --

7 Q. -- that you filed?

8 A. -- not offhand.

9 MR. BIDEAU: Okay. Can we pull up the  
10 answer to 71? That's J2, page 10, 71, 71.

11 BY MR. BIDEAU:

12 Q. As to 71, you admit that we seek a  
13 declaration, but you deny the remainder of paragraph 71.  
14 So, in fact, although we were asking in 71 that the Court  
15 uses its inherent authority over grand jury proceedings,  
16 because of the exceptional interest in this case and  
17 compelling circumstances, that the Court declare that  
18 we're allowed to use this testimony, your answer was,  
19 well, that's your declaration, but we deny paragraph 71.

20 So you asked the Court to deny that relief?

21 A. It is what it is.

22 MR. BIDEAU: Okay. And then we'll go to  
23 paragraph 72. I think you have a slide on that,  
24 72.

25

1 BY MR. BIDEAU:

2 Q. And, in 72, we say, the Post has sought  
3 from defendants, but defendants have refused to provide,  
4 access to the testimony, minutes and evidence presented  
5 in 2006 to the grand jury. Indeed, defendants have each  
6 filed motions to dismiss the complaint and the reliefs  
7 sought under 50 -- 905.27(1). Accordingly, a good faith  
8 dispute exists between the parties. Do you see that?

9 A. Yes.

10 Q. And you see in that case your office  
11 admitted that, your lawyers admitted that at least,  
12 admitting there was a good faith dispute between the  
13 parties and admitting that the defendants had refused to  
14 provide access to the testimony, minutes and evidence  
15 presented, right? No qualification, you all just admit  
16 that.

17 A. Again, it is what it is.

18 Q. Now, you said that this argument that  
19 Ms. Whetstone made during her opening statement, that the  
20 idea that you wouldn't object to disclosure, was  
21 something new, that just popped up at this hearing, that  
22 -- I think your phrase was, "you moved the goal posts,"  
23 right --

24 A. Yes.

25 Q. -- at this hearing? But that's not true

1 either, right, because that issue had been raised with

2 you all the way back in June of 2020, right?

3 A. Are you saying this lawsuit was about that?

4 Is that what you're saying, or are you saying that it was

5 about possession?

6 Q. The issue -- The issue of your position

7 with respect to whether you would agree with -- I'm sorry

8 -- whether you would object to the request to have the

9 records released was an issue that had been raised by

10 Mr. Mendelsohn back in June of 2020, correct?

11 A. Can you restate the question, please?

12 Q. Sure. Let me -- Let me try to do it a

13 little more articulately because that was pretty

14 terrible. Let me get the letter out to make it easier

15 for all of us. J16, please.

16 You've seen this letter, right, Exhibit 16?

17 A. I'm not sure if I've seen this one.

18 Q. Okay, well, did you know that, when your

19 lawyer filed his 57.105 motion back in early June and

20 then had that two-page letter that he served it with,

21 right, and he laid out, we don't have the records, right?

22 A. Correct.

23 Q. Which is the basis for your 57.105 --

24 A. Yeah, correct.

25 Q. -- we don't have it, leave me alone.

1 A. Well...

2 Q. Basically.

3 A. Yeah, no possession, custody or control.

4 Q. Okay, no possession, custody or control.

5 Mr. Mendelsohn, a couple weeks later, wrote

6 a letter back, right? Do you remember seeing that?

7 A. This is the letter you're referring to?

8 Q. That's the letter, and it's under tab 16 in

9 the binder.

10 A. Again, I don't remember seeing this letter.

11 Q. Can you flip to the second page?

12 A. This letter was written to my attorney --

13 Q. To your attorney, right.

14 A. -- back in June of 2020.

15 Q. June 23rd, 2020.

16 A. No, I don't remember reading this letter.

17 Q. Okay, well, let me see if I can help you

18 out then. Would you go to the middle of that paragraph

19 where it says, "The state attorney was named..." Can you

20 -- Go above that, where it says, "The state attorney was

21 named as a party, not simply" -- Do you see it? Okay.

22 Do you see Mr. Mendelsohn writes back, he

23 says, "Assuming the state attorney does not currently

24 have physical possession of the Epstein grand jury

25 materials" -- I mean, by the way, the Office of State

1 Attorney at some point would have had possession of the  
2 materials that were going to be presented to the grand  
3 jury, right? I mean, the office presented this stuff to  
4 the grand jury. You would have had possession.

5 A. If you're talking about the transcripts,  
6 no.

7 Q. No, but I'm talking about the other  
8 materials, the investigative materials, the exhibits, the  
9 minutes, the other things like that.

10 A. The minutes?

11 Q. Your office would have had those?

12 A. The minutes? I don't believe so. I guess  
13 it depends. I don't know how they did it back in Barry  
14 Krischer's administration, but the documents that you  
15 asked for, I've never had. So that's the only question I  
16 had.

17 Q. Well, hold on. You mean the transcripts,  
18 because in the complaint, we actually ask for more than  
19 transcripts.

20 A. Right, but those are documents I've never  
21 had, and that's the whole thing.

22 Q. You personally never had them, but --

23 A. Right.

24 Q. -- you agree with me, the Office of State  
25 Attorney would have, during the course of the

1 investigation, would have had those materials, it had to?

2 A. Again, I don't know what Barry Krischer's  
3 administration had back then.

4 Q. Well, when you got the public records  
5 request, did you have somebody go back and look and see  
6 what they had?

7 A. Well, obviously, when we got public records  
8 requests, we try to fulfill all of them.

9 Q. Right, and you don't know personally  
10 sitting here today what was done to respond to any of  
11 Mr. Mendelsohn or Mr. Grygiel, my partners' letters  
12 asking for materials from back during the Barry Krischer  
13 days, correct? Because there's been no response to those  
14 letters even to today.

15 MR. WYLER: Objection, Your Honor, those  
16 letters and the Chapter 119 request have nothing  
17 do with this lawsuit. They're not referenced in  
18 the lawsuit. They have no bearing on the  
19 requested relief that plaintiff is requesting  
20 here.

21 THE COURT: Overruled.

22 BY MR. BIDEAU:

23 Q. And so --

24 THE COURT: Can you repeat the question?

25 MR. BIDEAU: Sure, I'll repeat the

1 question.

2 BY MR. BIDEAU:

3 Q. You don't know what anybody in your office  
4 did to respond to Mr. Mendelsohn or Mr. Grygiel's  
5 letters, Exhibit 1 and Exhibit 37, correct? You don't  
6 personally know?

7 A. It is my understanding, based on  
8 conversations I had with the office, that every public  
9 records request has been responded to and that people  
10 were told, who requested Jeffrey Epstein grand jury  
11 transcripts, that we did not have them.

12 Q. Mr. Mendelsohn and Mr. Grygiel, in those  
13 letters, request a lot more than just transcripts, right?  
14 They wanted evidence. They wanted exhibits. They wanted  
15 that sort of material, correct? That was Exhibit 1 and  
16 37, we looked at, right?

17 A. When I say "transcripts," I mean records, I  
18 mean records, that anything we had, we put then out on  
19 that portal that your client refused to acknowledge.

20 Q. Well, the portal was things you'd already  
21 produced. That's what -- Your press release says this is  
22 all the stuff we've already given out, right? That's  
23 already been in the public, right?

24 A. Yeah.

25 Q. Okay, well, but you understand, we were

1 asking for stuff that you hadn't yet given out, and, as  
2 best you know, you don't have any personal knowledge as  
3 to whether or not -- what happened to those requests, to  
4 Mr. Mendelsohn's request or Mr. Grygiel's request, right?  
5 You personally don't know?

6 A. Well, again, you objected because of  
7 hearsay before, but, in speaking to an individual who  
8 does public records in my office, I've been told that  
9 that person had said whether or not we've had those  
10 documents, and so I believe that everyone who requested  
11 documents were told truthfully whether we had those  
12 documents or not. And we can use documents in a broad --  
13 in a broad way.

14 Q. In a broad sense, right?

15 A. Correct.

16 Q. But you don't have copies of any responses  
17 or that went back to Mr. Mendelsohn or Mr. Grygiel in my  
18 office when they requested documents, correct?

19 A. I would think that Mr. Wyler would have  
20 everything that we produced.

21 Q. Okay. Now, Mr. Mendelsohn, back in June  
22 of 2020, in response to your first 57.105 letter, he  
23 says, The state attorney was named as a party, not simply  
24 as custodian of the grand jury -- the grand jury records.  
25 The state attorney was named in his official capacity as

1 his office has, quote, as his primary interest,  
2 protection of its grand jury system, and he cites to a  
3 11th Circuit decision. Do you see that?

4 A. Yes.

5 Q. Okay. And, in that case, the U.S. petition  
6 -- he goes on to explain it. He goes on to explain that  
7 the Broward County State Attorney was involved in this  
8 case, and so Mr. Mendelsohn was indicating to you in that  
9 case where you were named not only whether you had  
10 custody; you were named in that case basically because  
11 you're in charge of the grand jury process, you had the  
12 right to object if the clerk wanted to give out those  
13 records or not.

14 A. Where does it say that?

15 Q. It's in the -- The case indicates that,  
16 when one seeks grand jury materials, the relevant state  
17 attorney is a necessary party in order to protect the  
18 grand jury system, and the Office of State Attorney  
19 supervised it to make arguments if needed against release  
20 of the grand jury materials. Do you see that?

21 A. Yes.

22 Q. So Mr. Mendelsohn was telling you, as  
23 opposed to what you said a few minutes ago in here, that  
24 the first time you saw these goal posts being moved,  
25 Mr. Mendelsohn -- was today when Ms. Whetstone testified

1 -- I mean, when Ms. Whetstone talked. In fact, all the  
2 way back to when the very first 57.105 motion was filed,  
3 Mr. Mendelsohn told you that one of the reasons that the  
4 Post sued you in this case was in order to address the  
5 situation that you had the right, if you thought it was  
6 appropriate, to object to the release of materials. Do  
7 you see that?

8 A. Was that in the complaint?

9 Q. I'm asking about the -- I'm asking about  
10 the --

11 A. Well, the letter you wrote after -- well  
12 after the complaint, the letter you're showing me here  
13 that was sent to Mr. Wyler is what it says it is.

14 Q. Correct.

15 A. That's on not in the complaint, right?

16 Q. But you told me that this idea of moving  
17 the goal posts, that the Post was suddenly making that  
18 argument, you told everybody in this courtroom a few  
19 minutes ago that just happened today, I mean, they're  
20 just moving the goal posts on me. Well, if the goal  
21 posts are being moved, that was back on June 23rd of  
22 2020, and you remember seeing this, right?

23 A. Again, I don't remember seeing this letter,  
24 but, again, this was not part of the complaint. This is  
25 an after-the-fact letter from Mr. Mendelsohn to my

1 lawyer.

2 Q. Correct, and so --

3 A. Okay.

4 Q. -- you -- neither you nor your lawyer ever  
5 responded to this letter, right?

6 A. Well, you'll have to talk to my lawyer  
7 about that. Obviously I don't personally respond to  
8 letters written to my lawyer.

9 Q. Correct. But you told us you're familiar  
10 with the pleadings, but you're not familiar with this  
11 particular letter?

12 A. Again, I don't remember seeing this letter.

13 Q. Now, Mr. Mendelsohn indicates in the last  
14 sentence, These are some of the same reasons why the  
15 state attorney was named in this case. Do you see that?

16 Very last sentence of that paragraph.

17 A. Yes.

18 MR. BIDEAU: Can we take a look at  
19 Exhibit 21? Do you have Exhibit 21 up?

20 Can you -- Can you blow up the part that's  
21 highlighted, please, and I'll read it?

22 BY MR. BIDEAU:

23 Q. Now, Exhibit 21 is Defendant David  
24 Aronberg's response to plaintiff's memorandum in  
25 opposition to the 57.105 motion, the original one filed

1 back in June of 2020. And do you see in paragraph -- in  
2 the first paragraph, you indicate, quote, Nonetheless,  
3 the state attorney has no objection and never had any  
4 objection to the Court releasing the records sought by  
5 plaintiff as to the disclosure of the requested materials  
6 sought herein lies within the province of the clerk  
7 pursuant to the order of the Court. Do you see that?

8 A. Yes.

9 Q. And this is the first time in any pleading  
10 -- Strike that.

11 First of all, obviously you knew this was  
12 an issue back in October of 2020, the fact that the Post  
13 was arguing that one reason you needed to be in this case  
14 was because you had the right to object, because you  
15 address that issue in October of 2020, correct?

16 A. Here.

17 Q. Here, right, as of October 2020. So that  
18 argument had been raised not for the first time today,  
19 but back in 2020, right, Mr. Aronson?

20 A. Aronberg.

21 Q. Aronberg. I'm sorry.

22 A. This is what it says it is.

23 And, again, I felt that this sentence was  
24 consistent with what our position always has been  
25 because, when we were forced to do the motion to dismiss,

1 we were forced, because of a matter of law, to make the  
2 legal argument as a legal matter that the Post is not  
3 entitled to this, but as far as my belief of whether I  
4 care whether these grand jury documents are released,  
5 I've never cared one way or the other, but, because of  
6 this, in my view, bad faith lawsuit, you forced us to do  
7 a motion to dismiss that told you we don't have this  
8 stuff, and, secondly, we had to do a response as a matter  
9 of law.

10 Q. Okay, now let me get back to my question.  
11 My question was: You told the Court earlier today that  
12 this moving the goal posts, this idea that you had the  
13 right to object and we wanted to make sure you weren't  
14 going to object was something that came up for the first  
15 time today, and that wasn't true, was it? That issue  
16 came up back in June of 2020 at the -- at the latest when  
17 Mr. Mendelsohn put it in his letter, and you saw it  
18 necessary to address it in October of 2020, right?

19 A. So the letter that I said I don't remember  
20 seeing is the letter that you say put me on notice that  
21 this argument was being made?

22 Q. Well, that letter certainly put you on  
23 notice if you didn't know it before that, sir, because it  
24 says it clear as day.

25 A. But it doesn't make my statement

1 inconsistent. It said, again, that I was not aware of  
2 your moving the goal posts, and, besides, it doesn't  
3 matter because this whole thing is about possession,  
4 custody and control, which you informed of that we didn't  
5 have. Now you're saying, well, this whole thing was  
6 about you wanted me to talk to the clerk, or you didn't  
7 want me to talk to the clerk, and to me that's  
8 disingenuous because that's not the subject of this  
9 lawsuit.

10           You mentioned in a sentence that  
11 Mr. Mendelsohn wrote to my lawyer much later than the  
12 complaint, well after the complaint, in one sentence in a  
13 letter to my lawyer, and you're saying, aha, we wanted  
14 this the whole time.

15           Q. Well, certainly we wanted it the whole  
16 time, and we wanted it at the, as Mr. Mendelsohn will  
17 testify, and Mr. Mendelsohn wrote that when your lawyer  
18 sent a 57.105, saying our case isn't frivolous, we think  
19 your office might have possession of the records, at  
20 least some of the records that we were seeking, and in  
21 addition, your office has the right to object.

22           A. Did you put that in the complaint? You  
23 didn't put that in the complaint.

24           Q. I know it's hard for a lawyer to not ask  
25 questions, but --

1 A. Fair enough. Fair enough.

2 Q. And try not to argue because our court  
3 reporter is going to kill us.

4 Okay, in any event, Mr. Aronberg, in the  
5 October 14th, 2020, response, you indicate that the state  
6 attorney has no objection, okay, to the clerk producing  
7 these records if the clerk produces them, right?

8 A. Right.

9 Q. And you know, by the way, that the clerk  
10 had already produced them without -- well, probably --  
11 nobody could find a court order -- had given them to the  
12 U.S. Attorney and the FBI years earlier, right?

13 A. I guess so. I mean, I wasn't there years  
14 earlier, so if that's what happened, yes, sure.

15 Q. And, by the way, shortly after you filed  
16 Exhibit 21 is when the Palm Beach Post dismissed the  
17 case, right? It was within 14 days of that, correct?

18 A. We can do it up there. Maybe 17 days?

19 Q. Whatever your timeline says.

20 A. Right. All right, you indicated on the  
21 20th is the first time you stated you had no objection to  
22 production of the materials, okay, and then on  
23 October 21st, now that you said you don't have them and  
24 you don't object, the Post dropped you as a party seven  
25 days later, see that?

1 A. Yeah.

2 Q. Right? Okay. And then 17 days later, you  
3 file an amended motion which makes a host of arguments  
4 not set forth in your original motion back in June  
5 of 2020, correct?

6 A. Well, you have to ask Mr. Wyler about the  
7 substance of that, but I know that the motion -- the  
8 amended motion was filed after I was already dismissed  
9 from the lawsuit and after your client failed to dismiss  
10 me within the 21-day grace period.

11 Q. Well, that's the 21-day grace period for  
12 the first motion that you filed, correct?

13 A. Correct, correct.

14 Q. But the motion we're here on today,  
15 according to the Court order and the notice, is your  
16 amended motion, which was never served prior to being  
17 filed, correct?

18 A. Well, are you saying that the filing of the  
19 second motion means that the first motion is now void, it  
20 just goes away, it didn't exist?

21 Q. We're going to be arguing that to the  
22 Judge, but the filing, under the law, the filing of a  
23 second motion that raises new and different arguments  
24 absolutely goes away, the first motion goes away.

25 A. But the whole purpose of the 21-day notice

1 is to give you a chance to dismiss me, and I was already  
2 dismissed by that point, so --

3 Q. So let's take that to its logical -- Let's  
4 assume you had gone ahead and served this back, say, back  
5 here in October, okay, and then you filed that response  
6 and we looked at it and said, oh, he's now admitting --  
7 he's now saying he's not going to oppose it. If we had  
8 dismissed you right then, you'd have no fee claim, right,  
9 because under the rule, we're allowed to dismiss.

10 A. You get 21 days.

11 Q. We get 21 days, right. So if you had  
12 served it all the way back here in October and if we had  
13 gotten your response and dismissed, you'd have no fee  
14 claim, right? We would have gotten your 57.105, and  
15 within the grace period, we would have dismissed it,  
16 right?

17 A. If the second one was filed before I was  
18 dismissed, within the 21 days --

19 Q. Yes, sir.

20 A. -- and the case was still pending? Then,  
21 yeah, you'd have a much better argument. But you don't  
22 have an argument now because, under the first --

23 Q. We'll argue -- We'll argue that to the  
24 Judge --

25 A. All right, fair enough.

1 Q. -- as to whether we have an argument now.

2 We think the Fourth is pretty clear on that one.

3 MR. BIDEAU: Would you bring up, please --

4 just last question -- Exhibit 25, paragraph 20?

5 BY MR. BIDEAU:

6 Q. And this is -- this is your amended motion,  
7 and you say, The state attorney has no objection to the  
8 clerk producing and disclosing the requested material  
9 should the Court grant an order to that effect; however,  
10 it is impossible for the state attorney to comply with  
11 the relief, blah, blah, blah, because you'd made that  
12 argument before.

13 That argument that you had no objection to  
14 the clerk producing the requested materials was not set  
15 forth in your original motion, your original 57.105  
16 motion, correct?

17 A. I believe that's correct.

18 MR. BIDEAU: That's all I have, Judge.

19 THE COURT: Redirect?

20 MR. WYLER: Just real quick.

21 REDIRECT EXAMINATION

22 BY MR. WYLER:

23 Q. Mr. Aronberg, you were just talking -- or,  
24 just being asked questions about the public records  
25 requests that were made of your office.

1                   Did the plaintiff ever file a Chapter 119  
2 lawsuit against your office for those records?

3                   A. No.

4                   MR. WYLER: No further questions.

5                   THE COURT: Is Mr. Aronberg excused?

6                   THE WITNESS: Thank you, Your Honor.

7                   MR. WYLER: Yes, you're excused.

8                   MS. WHETSTONE: Your Honor, may we take a  
9 five-minute break?

10                  THE COURT: We'll be back in a few. I'll  
11 be in recess, we'll say 5 to 10 minutes.

12                  (Off the record from 3:39 p.m. to  
13 3:57 p.m.)

14                  THE COURT: All right, please be seated.

15                  MR. WYLER: Your Honor, before I rest, I  
16 just wanted to say to the Court that plaintiff and  
17 defense counsel, we've -- we've agreed on all  
18 those exhibits, that joint exhibit book. We just  
19 wanted to make sure that all exhibits, 1 through  
20 37, are recognized by the Court.

21                  THE COURT: All right, so Exhibits 1  
22 through 37 of this joint binder have been  
23 stipulated to and are in evidence, and that's the  
24 an agreement of the parties.

25                  MS. WHETSTONE: Yes, Your Honor.

1 MR. WYLER: Thank you, Your Honor.

2 (Joint Exhibits 1 through 37 were admitted  
3 into evidence.)

4 Defense rests.

5 THE COURT: But not this timeline, correct?

6 This is not?

7 MS. WHETSTONE: That's correct. That's a  
8 demonstrative. Thank you, Your Honor.

9 THE CLERK: Thank you.

10 MS. WHETSTONE: The plaintiff calls Stephen  
11 Mendelsohn.

12 THE COURT: Before we do this, how long is  
13 Mr. Mendelsohn going to testify today?

14 MS. WHETSTONE: We will make this as fast  
15 as possible.

16 THE COURT: I'm not trying to rush you  
17 through everything, but we're done at 5:00 today.

18 MS. WHETSTONE: Thirty minutes.

19 THE COURT: And after Mr. Mendelsohn, are  
20 you done?

21 MS. WHETSTONE: Yes, Your Honor.

22 THE COURT: Okay. In the event that you're  
23 going past 5 -- we're not going to go past 5, but  
24 in the event you need to go past 5, I'll bring you  
25 back in later in the week. It won't be tomorrow.

1 Tomorrow I have another matter that I have to hear  
2 in the afternoon. But, in the event we need to go  
3 past 5, even if it's for argument, probably  
4 Thursday or Friday in the afternoon, I'll bring  
5 you back.

6 If the testimony is going to conclude today  
7 or mostly conclude today and the only thing left  
8 are your arguments of law and your arguments as to  
9 the findings of fact, then that might be something  
10 that we end up doing on Thursday or Friday  
11 afternoon, okay?

12 MR. WYLER: Yes, Your Honor. I think it  
13 might be worthwhile to point out to the Court that  
14 the reasonableness phase of this, if we get there,  
15 we've already agreed that there would be no  
16 experts, so I think that could dispense with that.

17 I am located up in Amelia Island, Florida,  
18 so I am --

19 THE COURT: Fifteen minutes away.

20 MR. WYLER: Super close. So I don't know  
21 if it would be possible, if we finished with the  
22 testimony today, if maybe we could make written  
23 closing arguments to the Court instead of coming  
24 back?

25 THE COURT: How do you feel about writing?

1 MS. WHETSTONE: We would have no objection  
2 to that if Your Honor would prefer. Whatever Your  
3 Honor prefers, we will do.

4 THE COURT: If you guys don't mind writing.  
5 I mean, I think people are better in writing.  
6 People overestimate their oratory skills, but  
7 okay.

8 THE CLERK: Do you solemnly swear or affirm  
9 that the evidence you're about to give will be the  
10 truth, the whole truth and nothing but the truth?

11 THE WITNESS: Yes.

12 Thereupon,

13 STEPHEN MENDELSON, ESQ.,  
14 having been duly sworn by the Clerk of the Court,  
15 responded and testified as follows:

16 THE COURT: Whenever you're ready.

17 MS. WHETSTONE: Thank you, Your Honor.

18 DIRECT EXAMINATION

19 BY MS. WHETSTONE:

20 Q. Good afternoon, Mr. Mendelsohn.

21 A. Hello.

22 Q. Please introduce yourself to the Court.

23 A. Yes. I am Stephen Mendelsohn.

24 Let me just move a little closer.

25 Yes, I'm Stephen Mendelsohn, and I'm an

1 attorney at Greenberg Traurig in the Fort Lauderdale  
2 office.

3 Q. Please let us know your educational  
4 background.

5 A. I have a bachelor's degree from Colgate  
6 University in Upstate New York, graduated in 1980 and --  
7 in economics, and I have a J.D. degree from Hofstra  
8 University School of Law from 1983.

9 Q. And what's your work experience going  
10 backwards in time?

11 A. I've been at Greenberg Traurig as a  
12 commercial litigator for approximately 20 years, and all  
13 that time I've been a shareholder at Greenberg. As I  
14 said, I work out of the Fort Lauderdale office at  
15 present. Previous to that, I was in the Boca Raton  
16 office of Greenberg Traurig, so going back 20 years.

17 Before that, I was an attorney with  
18 Rutherford Mulhull & Wargo in Boca Raton, also commercial  
19 litigation, and, prior to that, I was a named partner a  
20 firm in Miami. That was Carolonga, Langen, Lorenza  
21 (phonetic) & Mendelsohn, and before that, I was an  
22 assistant attorney general for the State of New York.

23 Q. In what states are you licensed to practice  
24 law?

25 A. New York and Florida.

1       Q. At Greenberg Traurig, what types of cases  
2 do you practice?

3       A. A variety of commercial litigation,  
4 copyright, trademark, securities, real estate disputes,  
5 disputes over employment, contract, fraud. Also, not  
6 just simply commercial, but I also do defamation defense,  
7 First Amendment cases on defamation, and I do trial work  
8 and appellate work.

9       Q. When you were at the New York State  
10 Attorney General's Office, what types of cases did you  
11 handle?

12       A. I was in the Litigation Bureau of Labor  
13 Statistics, and that's civil litigation, primarily civil  
14 rights and constitutional law cases involving 42 USC  
15 Section 1983, where New York State and its officials were  
16 sued in their official capacity. That included cases  
17 under the Fourth Amendment, cases under the Seventh  
18 Amendment occasionally, and the Eighth Amendment and  
19 Fourteenth Amendments to the U.S. Constitution.

20       Q. Are you AV rated?

21       A. Yes, AV rated as well.

22       Q. Have you ever been sanctioned or subject to  
23 disciplinary action?

24       A. Never.

25       Q. Ever --

1 A. In any jurisdiction.

2 Q. Ever had 57.105 sanctions or Rule 11

3 sanctions awarded in any case that you've worked on?

4 A. This is the first motion ever under 57.105  
5 or Rule 11 under the federal rules or any of that.

6 Q. So besides this case, no?

7 A. No.

8 Q. You've never had any motion raised?

9 A. No. No, ma'am.

10 Q. How did you first get involved with the  
11 Jeffrey Epstein case on behalf of the Palm Beach Post?

12 A. I was contacted by Michael Grygiel from our  
13 Albany office. He represents a number of media and  
14 newspapers throughout the United States, and essentially  
15 he heads the media group at Greenberg Traurig. And he  
16 was looking for someone to help the Palm Beach Post in  
17 obtaining documents from at that time the state  
18 attorney's office here in Palm Beach County.

19 Q. When were you contacted by Mike Grygiel?

20 A. When approximately?

21 Q. (Nods head up and down.)

22 A. In the summer of 2019. It's Grygiel,  
23 G-r-y-g-i-e-l.

24 Q. Thank you. So here, around -- on the  
25 timeline, I'm indicating July 2019?

1       A. Yes.

2       Q. And what did the Post want to find out and  
3 inform the public about with regard to Jeffrey Epstein?

4       A. Right, at that time, the Epstein matter was  
5 back in the news. Mr. Epstein had been arrested by the  
6 FBI, and he was being prosecuted by the U.S. Attorney's  
7 Office in the Southern District of New York and was in  
8 custody.

9           So the issues of the plea deal that had  
10 been worked out by Mr. Krischer's office back in 2006 was  
11 back in the news, and, in particular, President Trump's  
12 Secretary of Labor, Alexander Acosta, at that time was  
13 the U.S. Attorney in the Southern District of Florida who  
14 also helped negotiate the plea and the non-prosecution  
15 agreement, and there was a big firestorm as to whether or  
16 not Mr. Acosta should or should not resign as Secretary  
17 of Labor.

18       Q. What was the Post interested in finding out  
19 with regard to the prior grand jury investigation by the  
20 Palm Beach County State Attorney?

21       A. Well, because of the firestorm surrounding  
22 Alex Acosta and the re-arrest, or new arrest, I should  
23 say, of Jeffrey Epstein, the Post was interested in  
24 looking back again as to what Barry Krischer's office as  
25 state attorney did in terms of using or misusing the

1 grand jury process, in terms of the prosecution of  
2 Jeffrey Epstein both in terms of the very light  
3 non-prosecution agreement that they allowed him to enter  
4 into, as well as the extremely lenient sentence that he  
5 had.

6 Q. Were you involved in drafting letters to  
7 the state attorney's office seeking documents relating to  
8 the Epstein prosecution?

9 A. Yes.

10 MS. WHETSTONE: Would you please bring up  
11 Exhibit 1?

12 BY MS. WHETSTONE:

13 Q. We're pulling up Exhibit 1 in the joint  
14 exhibit binder. It's an August 27th letter.

15 A. Yes.

16 Q. Or, actually, Mr. Mendelsohn, please let me  
17 know what this letter is.

18 A. Yes, this is Joint Exhibit 1. This is a  
19 letter I wrote on August 27, 2019, to State Attorney Dave  
20 Aronberg on behalf of the Post requesting specific  
21 documents related to the grand jury investigation of  
22 Jeffrey Epstein.

23 Q. What were you seeking in this letter?

24 A. Particularly, we were interested in items  
25 stated on pages 2 and 3, some of what we were looking at.

1 We were very interested in finding out the conversations  
2 between defense counsel, that's criminal defense counsel  
3 for Mr. Epstein and, in particular, Alan Dershowitz and  
4 Mr. Krischer's office.

5 We knew from investigation that  
6 Mr. Dershowitz had provided Mr. Krischer with exhibits or  
7 documents which went to injure the testimony -- the  
8 credibility and the testimony of the young woman who  
9 testified before the grand jury. I mean, we were looking  
10 for those communications between Mr. Krischer's office  
11 and defense counsel, in particular where Mr. Dershowitz  
12 and others from the defense provided those materials to  
13 damage the credibility of the grand jury witness.

14 We also wanted communications between  
15 Mr. Krischer's office and the FBI and the U.S. Attorney's  
16 Office because those issues were coming to the fore  
17 because of Alex Acosta, and we did know that there were  
18 such communications, and we wanted those documents to go  
19 back to the Post for public disclosure.

20 Q. What was the state attorney's office's  
21 response to this August 27th letter?

22 A. I never received a response to this letter.

23 Q. Were there other letters from Greenberg  
24 Trauring to the state attorney's office following up?

25 A. Yes. Mr. Grygiel wrote a letter to the

1 state attorney's office as well. When I didn't receive a  
2 response, I guess he felt whatever, but he did send that  
3 next letter.

4 Q. Okay, so I'm pulling up Exhibit 37. Is  
5 this -- Let me know what this is.

6 A. Yes, this is Mr. Grygiel, from our Albany  
7 office, this is his letter to State Attorney Dave  
8 Aronberg, October 9, 2019, reiterating some of the things  
9 that we thought were in the possession of the state  
10 attorney's office but had not been provided to the Palm  
11 Beach Post.

12 Q. Did you get a response -- Was there a  
13 response to this letter?

14 A. No.

15 Q. Did you review the documents that were  
16 provided by the state attorney's office to the Post?

17 A. Yes. Before -- Sort of in the middle of  
18 this, the Palm Beach Post, before I had written, had made  
19 a public records request of the state attorney's office,  
20 and some materials had been provided, and we did go  
21 through that, those materials. They did not include  
22 those that I mentioned in Joint Exhibit 1, which  
23 particularly were missing the Dershowitz communications  
24 and the communications with Mr. Krischer's office, the  
25 FBI and the U.S. Attorney's Office.

1       Q.   So what information -- what additional  
2 information was needed that the Post was seeking?

3       A.   We wanted to see why the grand jury was  
4 used in such a way as to result in a very lenient charge  
5 for Mr. Epstein, as well as the lenient sentence that was  
6 part of the non-prosecution agreement.

7           We knew from the Post's investigation and  
8 from other materials we had assembled that there were --  
9 there was a grand jury that was empaneled. In fact,  
10 there was two. The first one was canceled, and the  
11 second one was conducted, and a witness, a victim did  
12 testify. And we were on fairly certain ground that the  
13 state attorney's office under Barry Krischer undermined  
14 her credibility with materials provided to Mr. Krischer  
15 by defense counsel --

16       Q.   Did you --

17       A.   -- and we did not get those materials back  
18 from the state attorney's office.

19       Q.   Did you review any other information to  
20 reach the conclusions about the grand jury indictment?

21       A.   Yes. I wanted to say that I was not the  
22 only one working on this at Greenberg Traurig. In  
23 addition to Mr. Grygiel, Nina Boyajian of our Los Angeles  
24 office, who is a First Amendment expert, was also part of  
25 our team. She is very well versed in First Amendment

1 issues, especially when it comes to representing the  
2 media's interest under the First Amendment.

3 So we also had paralegals tasked with that  
4 responsibility, too. We had assembled deposition  
5 transcripts, affidavits that had been submitted in  
6 various cases. I personally have spoken with the Town of  
7 Palm Beach County -- the Town of Palm Beach Chief of  
8 Police Reiter and discussed his testimony with him in  
9 civil cases. I've obtained his deposition transcripts.  
10 We spoke to only a few of the plaintiffs' lawyers in the  
11 cases, but some of them did provide us with materials.

12 There was a voluminous amount of materials  
13 we used. We also went back to the criminal case where  
14 the materials were in the public domain and read through  
15 those items as well.

16 Q. And, after this team at Greenberg reviewed  
17 all this information and did due diligence, what was  
18 decided next?

19 A. Ultimately, the team decided that it was  
20 necessary to bring a lawsuit to obtain what we call grand  
21 jury materials. It's not just simply the transcripts of  
22 what occurred in front of the grand jury, but all of the  
23 ancillary or corollary materials related to that. And  
24 that, as we stated in Exhibit 1, included, but not  
25 limited to, the communications where we believe

1 Mr. Dershowitz provided damaging information or  
2 documentation to Mr. Krischer's office to destroy his own  
3 witness in front of the grand jury, which honestly,  
4 looking at all of the materials we had received and based  
5 upon my personal discussions with the chief of police of  
6 the Town of Palm Beach, we came to the conclusion  
7 Mr. Krischer had abused his authority as state attorney.

8 Q. When did the due diligence process start  
9 and when did it end as far as reviewing the facts?

10 A. Started in the summer of 2019, and it --  
11 Well, the first phase resulted in the lawsuit, and that  
12 contained hundreds of hours' worth of work, not only  
13 legal work, but, as I said, factual investigatory work as  
14 well. But it continued even after the lawsuit had been  
15 filed as well. We didn't stop in case we found something  
16 new, and ultimately we did find new things out in this  
17 case, which I can add later, but there were new  
18 revelations that had occurred.

19 Q. And the initial complaint was filed in...?

20 A. The end of November of 2019.

21 Q. What legal research was done before filing  
22 the initial complaint? And that was for the statutory  
23 count under 905.27.

24 A. Sure. The way we divided the work between  
25 myself primarily and Ms. Boyajian was that we would

1 handle the First Amendment issues in the case. So the  
2 U.S. Supreme Court cases involving the rights of the  
3 media to be the public surrogate or be the public  
4 mouthpiece and to obtain and participate in all facets of  
5 criminal proceedings, she helped me and provided that --  
6 I was aware of all of that, but she certainly had a  
7 greater in-depth knowledge than I did. I was tasked with  
8 the responsibility of fleshing out Section 905.27 of the  
9 Florida statutes primarily.

10 Q. What did you personally research to flesh  
11 out Florida Statute 905.27?

12 A. I read every word of Chapter 905. I looked  
13 at Law Review articles. I remember one from Catholic  
14 University, Valparaiso and others about the grand jury  
15 process, grand jury secrecy, both federal cases and state  
16 cases. I found every reported case under 905.27, which  
17 particularly dealt with the issues that we were  
18 discussing before and that Mr. Aronberg testified about,  
19 and that went back to even the predecessor statute to  
20 905.27, which is into the 1920s. And I tried to find  
21 legislative history on the statute, but there wasn't any.

22 So I amassed 50, 60 cases under the statute  
23 going back from the '20s, '30s, '40s, '50s, '60s, et  
24 cetera, under 905.27. I read all of them.

25 Q. It sounds like a great deal of research,

1 but did you engage in any other research before filing

2 the initial complaint?

3 A. Well, federal as well, not only under the  
4 state, but I wanted to see, you know, who to sue, to be  
5 honest with you, in this case. We had a debate amongst  
6 ourselves as to who the proper defendants were going to  
7 be, and my principal responsibility was determining under  
8 Florida law who that would be.

9 So I had extensive experience as an  
10 assistant attorney general on suing, at least in  
11 defending state officials in not only 1983 cases, but  
12 many other type of cases where state officials are sued  
13 in their official capacity. So this was certainly  
14 nothing new to me.

15 I probably handled 3, 400 cases like that,  
16 all on the defense side. So I was very familiar with  
17 arguments of who was the proper party and the role of a  
18 state official in litigation.

19 So what did I do? I went to see whether  
20 there were other 905 cases, Chapter 905 cases where state  
21 officials had been sued, and in particular I found two  
22 cases. One was a state case and one was a federal case.  
23 The state case was James vs. Wille and, coincidentally,  
24 actually involved the predecessor to Barry Krischer, and  
25 that case involved the beating of an inmate at the Palm

1 Beach County Jail out by Belle Glade, and that individual  
2 sought grand jury testimony, and the state attorney was  
3 named as a party in the case and, in fact, participated  
4 in the case as to whether or not grand jury secrecy under  
5 the statute -- you know, the extent of it and made legal  
6 arguments opposing such.

7 Q. So we're talking about some of the cases  
8 you relied upon --

9 A. Yes.

10 Q. -- in determining that the state attorney  
11 was a necessary party defendant, and I wanted to pull up  
12 -- you mentioned James vs. -- Was it the James vs. Wille  
13 case?

14 A. Yeah, James vs. Wille, correct.

15 Q. And that's Exhibit 36. Can you just let me  
16 know if Exhibit 36 is the case you were talking about?

17 A. Yep, that's the case.

18 Q. And were there any other cases you relied  
19 upon specifically with regard to the state attorney  
20 necessarily being a party?

21 A. Yes. An 11th Circuit case called In re  
22 Grand Jury. It's a Federal 11th Circuit Court of Appeals  
23 case.

24 MS. WHETSTONE: And that's in Your Honor's  
25 binder, the Authorities binder at tab 11. We'll

1 pull that up.

2 BY MS. WHETSTONE:

3 Q. Is that the In re Grand Jury case?

4 A. Yes, that's the case.

5 Q. So what were the three -- what were the  
6 reasons the state attorney was named a defendant?

7 A. Well, this case particularly, the state  
8 attorney was from Broward County named in this case.  
9 It's a little complicated facts, but essentially there  
10 was a federal grand jury that issued a subpoena to the  
11 Broward County State Attorney seeking state attorney  
12 grand jury materials for a particular investigation, and  
13 the Broward County attorney, as you can see here,  
14 participated in this case and objected to the release of  
15 such under 905.27.

16 And I was particularly interested in the  
17 language from this case which said that the state  
18 attorney's role was an essential one because his or her  
19 role was to protect the grand jury process, which  
20 included grand jury secrecy.

21 So, based upon the James vs. Wille case and  
22 this case and my background in defending state officials,  
23 I felt that the state attorney here in his official  
24 capacity was a necessary party because someone had to  
25 advocate one way or the other for grand jury secrecy if

1 the state attorney decided that's what he wanted to do.  
2 But, if we didn't name the state attorney, we were  
3 denying that state official and that office the right to  
4 object under secrecy laws.

5 So the purpose was to allow the state  
6 attorney, if he chose to do so, to object to the  
7 disclosure under 905.27 and to advocate for the state  
8 secrecy interest, and that was a prime issue of why he  
9 was named.

10 Q. Were there other reasons?

11 A. Well, we weren't sure what the state  
12 attorney's office had. We knew that at one point the  
13 state attorney's office had grand jury materials because  
14 that's -- under Mr. Krischer that's what had occurred.  
15 He presented this to the grand jury. So we weren't  
16 completely sure who had what.

17 So we also believed, and I still believe,  
18 that the statute does not prohibit the state attorney  
19 from requesting the state attorney to look at grand jury  
20 materials, not disclose it to the public, but merely to  
21 disclose it to the state attorney if the state attorney  
22 wanted to look at it.

23 So we were hopeful that, if the state  
24 attorney was interested in looking at these materials,  
25 that he would say that he had the right to look at them

1 under 905.27 and then, if so, ask the Court for an  
2 in-camera review before release to the public.

3 So those are the three issues we were  
4 concerned with.

5 Q. Did Greenberg Traurig conclude that the  
6 state attorney was a necessary party to this case  
7 regardless of whether it had possession of the grand jury  
8 materials?

9 A. Yes.

10 Q. And was that conclusion a yes?

11 A. Yes, it was.

12 Q. So, after the complaint -- the initial  
13 complaint was filed in November of 2019, were discussions  
14 had with the state attorney's counsel and the counsel for  
15 the clerk?

16 A. Yes.

17 Q. What were those discussions?

18 A. Well, we had discussions about the case,  
19 particularly where this is going, did they have  
20 objections and, if so, under what basis did they have  
21 objections.

22 Q. After the complaint -- the initial  
23 complaint was filed, what position did the state attorney  
24 take in the case?

25 A. Took two -- Took two positions. He filed

1 an answer, and that answer contained a motion to dismiss.

2 Q. Backing up. Sorry. After the initial  
3 complaint was filed, what was the -- what was the  
4 position taken by the state attorney to the initial  
5 complaint, just the Count 2?

6 A. Okay.

7 Q. Sorry, just Count 1.

8 A. His position was that grand jury secrecy  
9 was preeminent under 905.27, and that statute barred the  
10 release of the materials. He also argued that the  
11 statute was only operative where there was a pending  
12 civil case and a pending criminal case, and since the  
13 Epstein case was not pending civilly involving the Post,  
14 or the criminal case, there was no criminal case in Palm  
15 Beach County, we didn't have any position or standing  
16 under the statute to seek the materials on behalf of the  
17 Palm Beach Post.

18 Q. Did the state attorney file a motion to  
19 dismiss the initial complaint?

20 A. Yes.

21 Q. What was your reaction to that?

22 A. Well, I was hopeful that they wouldn't  
23 object or seek to dismiss it, but I understood that they  
24 had a statutory obligation to protect grand jury secrecy,  
25 so I didn't take it personally or anything like that. I

1 understood the role that they were playing because that  
2 was the role we gave them the opportunity to play in this  
3 case. So I was neither surprised, nor upset that they  
4 played that role, because that's the opportunity we gave  
5 them.

6 Q. Did the clerk file a motion to dismiss the  
7 initial complaint as well?

8 A. Yes.

9 Q. After the state attorney filed his motion  
10 to dismiss the initial complaint, what did the Post do in  
11 response?

12 A. After the initial -- Well, we filed an  
13 amendment to the -- to the complaint.

14 Q. Did you take a look at whether there were  
15 other causes of action you could assert?

16 A. Yes. We decided to develop the First  
17 Amendment issue in more depth and argue that the Post had  
18 rights under the First Amendment, as well as the statute,  
19 in conjunction with the statute to obtain the materials,  
20 as well as an argument that I had developed which was  
21 that the Court has inherent authority as the ultimate  
22 supervisor of the grand jury system under the Florida  
23 Constitution to prevent abuse of the grand jury system,  
24 and we felt that the Court had such authority. That was  
25 the Clayton case that I was relying on.

1       Q. We're going to pull up Exhibit 9, which is  
2 the amended complaint in this matter.

3            Could you confirm to me that's the first  
4 amended complaint?

5       A. Yes, I see that. That's on the board here.  
6 Yes, it's in front of me as well.

7       Q. And we'll turn to it, but the state  
8 attorney answered Count 1 of this amended complaint,  
9 which was the count for declaratory judgment; is that  
10 correct?

11      A. That is correct. They moved to -- Yes,  
12 they moved to dismiss Count 2, the purely statutory  
13 claim, and they answered the declaratory judgment which  
14 was the mixture of First Amendment, statute, inherent  
15 authority of the Court.

16      Q. What do you recall about reviewing the  
17 answer to the first amended complaint for declaratory  
18 relief?

19      A. Well, they continued to oppose the release  
20 of the materials under 905.27 asserting grand jury  
21 secrecy and asserting that we didn't have a claim under  
22 the statute. I did note that they admitted in  
23 paragraph 72 that the case was brought in good faith, and  
24 that's particularly the declaratory judgment one. That  
25 stood out to me.

1       Q. We'll pull that up. I think we've seen it  
2 a couple times. We'll pull it up.

3               Please let me know if this comparison of  
4 Exhibit 9 and Exhibit 10 is the paragraph you're talking  
5 about.

6       A. Right, right, yes, that they refused to  
7 provide access. That's through their objection to the  
8 clerk to testimony, minutes and other evidence. Again,  
9 this was not just simply transcripts. It was much  
10 broader than that. And that a good faith dispute exists,  
11 and they admitted all of that.

12       Q. Did Count 1 for declaratory relief seek to  
13 force the state attorney to produce documents that he did  
14 not have?

15       A. No.

16       Q. Did the state attorney's position that his  
17 office did not have possession or custody of the grand  
18 jury materials end the need for his office to be a party  
19 to the declaratory relief claim?

20       A. No, and really the proof of that is what  
21 actually occurred, which is they moved forward with their  
22 motion to dismiss and ultimately a motion for summary  
23 judgment.

24               So they opposed the release of the  
25 materials, as was their right, under the statute

1 asserting grand jury secrecy. So it actually proved why  
2 we put them in the case, which is to give them the  
3 opportunity on behalf of the office officially to assert  
4 grand jury secrecy, which is what they did. So, in  
5 effect, it worked. They took advantage of the  
6 opportunity and asserted that we were not entitled to it  
7 under the statute's grand jury secrecy provisions.

8 Q. On June 8th, 2020, Judge Marx -- did Judge  
9 Marx enter an order on the motion to dismiss Count 2  
10 under Florida Statute 905.27?

11 A. She did.

12 Q. And what was -- what was the ruling?

13 A. She determined that the Post lacked --  
14 well, that the statute did not create a private right of  
15 action, that it was limited to those who were seeking the  
16 materials in the pending civil case and a pending  
17 criminal case, so she did it on a very narrow ground.

18 Q. That order -- sorry.

19 A. Go right ahead.

20 Q. Mr. Mendelsohn, go ahead.

21 Okay, that order did not address the  
22 declaratory judgment claim in Count 1, did it?

23 A. No.

24 Q. When did the state attorney send its  
25 initial what he calls place-marker 57.105 demand letter

1 and motion for fees?

2 A. Within hours of the order from Judge Marx  
3 was issued, I believe, on June 8, 2020.

4 Q. And at that point why was the state  
5 attorney kept in the case?

6 A. Well, they were still objecting to  
7 disclosure under Count 2, under the declaratory judgment.  
8 They were still asserting that grand jury secrecy and the  
9 statute could not be overcome by the First Amendment or  
10 by the Court's inherent authority, and that the Court's  
11 inherent authority was limited by the statute, which we  
12 obviously thought was sort of the other way, that the  
13 statute or the legislature could not inhibit the Court's  
14 inherent authority because the judiciary had its rights  
15 and the legislature had its rights. So that issue still  
16 remained.

17 Q. Did you write to the state attorney's  
18 counsel and lay out the Post's reasons for continuing to  
19 include the state attorney in the case?

20 A. Yes. That's my letter of June 23rd, 2020.

21 Q. And we'll go ahead and pull that up.

22 That's Exhibit 16.

23 Is that the letter that you're referring  
24 to?

25 A. Yes.

1 Q. And your letter set forth the reasons why  
2 the state attorney was named as a party in the case --

3 A. Yes.

4 Q. -- and continued to be named?

5 A. Yes.

6 Q. Did the state attorney's office ever  
7 address the second reason for keeping the state attorney  
8 in the case in response to this letter?

9 A. I never received a written response to this  
10 letter.

11 Q. And that second reason was that he was the  
12 -- that the state attorney's office was an official  
13 tasked with protecting grand jury secrecy?

14 A. Correct.

15 Q. And, in your letter, did you cite a case to  
16 the state attorney?

17 A. Yes. I cited to In re Grand Jury  
18 Proceedings, the 11th Circuit case.

19 Q. Did you have discussions with the state  
20 attorney's counsel after this point, after writing this  
21 letter?

22 A. Yes, with Mr. Wyler.

23 Q. And what were they?

24 A. What are we going to do about this case  
25 essentially. Is the state attorney going to oppose us?

1 Is he continuing to oppose us? Because I never received  
2 a response to my June 23rd letter, and I wanted it to be  
3 understood that we honestly believed that the state  
4 attorney had a necessary role to play in their official  
5 capacity. We were hopeful that they would take a neutral  
6 position, but they remained adamant that they had to  
7 protect grand jury secrecy under the statute, which we  
8 respected.

9 Q. And I don't want to know the substance of  
10 settlement discussions, if there were any, but did  
11 settlement discussions go on with the state attorney's  
12 counsel after the June 23rd letter?

13 A. Yes. Yes, they did.

14 Q. And is that indicated on the timeline here  
15 of June, June 8th, 2020, to October 15th, 2020?

16 A. Yes. With Mr. Wyler, yes.

17 Q. Mr. Wyler.

18 A. He was a very nice man on the phone. We  
19 had very good conversations, very professional.

20 Q. The state attorney filed his motion for  
21 fees on July 1st, 2020; is that correct?

22 A. Yes.

23 Q. And is this the state attorney's first  
24 motion for fees that was filed on July 1st, 2020?

25 A. It is.

1 Q. Did the initial 57.105 motion as filed set  
2 forth any of the grounds for the motion?

3 A. No, it didn't. It just said that they were  
4 entitled to 57.105.

5 Q. So, after this point, did you -- did the  
6 Post and Greenberg seek discovery from the clerk?

7 A. Yes.

8 Q. And this was in the litigation?

9 A. Yes.

10 Q. What discovery did you seek from the clerk?

11 A. We wanted to know whether or not any --  
12 well, first, whether the state attorney under  
13 Mr. Krischer had asked for any of the materials that the  
14 clerk had had, and, also, whether the FBI and U.S.  
15 Attorney's Office had asked the clerk to provide such  
16 materials. And the clerk indicated to us in response to  
17 a request that the clerk's office had done so, though  
18 they were vague as to why and when.

19 Q. And what -- did you serve  
20 interrogatories --

21 A. Yes.

22 Q. -- and document --

23 A. Requests, yes. We wanted to see a log of  
24 the materials in the grand jury sealed -- that the clerk  
25 had sealed. We hoped that there was a log indicating

1 what was in there, not really specifically what was in  
2 there, but by category, whether it was a transcript,  
3 whether there were exhibits and/or whether there were  
4 affidavits or whether there were deposition transcripts.  
5 Whatever there was in there, we wanted to understand.

6 The clerk had responded that they don't  
7 keep a log, so they couldn't tell us unless the seal was  
8 broken what was in there.

9 Q. In August of 2020, the state attorney's  
10 office filed a motion for summary judgment; is that  
11 correct?

12 A. Yes.

13 Q. And Exhibit 19, please. Is this the state  
14 attorney's motion for summary judgment that's on the  
15 screen?

16 A. Yes, it is. Yes.

17 Q. And, in support of this motion for summary  
18 judgment, did Mr. Aronberg file an affidavit in support?

19 A. He did.

20 MS. WHETSTONE: If you could go to 18,  
21 please.

22 BY MS. WHETSTONE:

23 Q. And is 18 the State Attorney Dave  
24 Aronberg's affidavit in support?

25 A. It is.

1       Q. At this point, after the affidavit had been  
2 filed, had the state attorney responded to another one of  
3 the reasons that he had been named as a necessary party  
4 to the action?

5       A. No. They focused exclusively on possession  
6 rather than their position protecting the grand jury's  
7 secrecy issue which they had advocated for.

8       Q. So did the state attorney's affidavit and  
9 motion for summary judgment address In re Grand Jury  
10 Proceedings or any of that -- any point in your letter  
11 about his office being able to prevent the clerk from  
12 releasing grand jury materials?

13       A. No, they never responded to that.

14       Q. Was there still a factual issue -- At this  
15 time in August 2020, was there still a factual issue as  
16 to whether the state attorney had physical possession of  
17 copies of grand jury materials?

18       A. Well, we knew at one point Mr. Krischer  
19 obviously had to have had such. We also had -- We were  
20 of the belief that there were communications, on very  
21 strong grounds, between Mr. Krischer's office and  
22 Mr. Dershowitz and other defense counsel, as well as the  
23 FBI and U.S. Attorney leading up to and including the  
24 indictment, the non-prosecution agreement, as well as the  
25 sentencing report.

1           We never received any such, and we knew  
2    they were out there. Exactly who had them, where they  
3    were, we weren't sure. We learned in hindsight that the  
4    U.S. Attorney's Office had been provided with such by the  
5    clerk's office. This is the Palm Beach County clerk's  
6    office.

7           Q. So fast forwarding a bit to October 2nd,  
8    2020, did Greenberg and the Post -- sorry -- did the Post  
9    file a response to the state attorney's first  
10   place-marker 57.105 motion?

11          A. We did.

12          Q. And if you could pull up Exhibit 20.

13          A. Which one is this exhibit?

14          Q. 20.

15          A. That's what I thought. Okay.

16          Q. Is this the Post's response, memorandum of  
17    law of the plaintiff to the state attorney's --

18          A. That is correct.

19          Q. -- 57.105 sanction motion?

20          A. Yes. I drafted this, yes.

21          Q. On page 8 --

22           MS. WHETSTONE: Gerard, do you mind going  
23    to page 8.

24    BY MS. WHETSTONE:

25          Q. Did you again raise the state attorney's

1 ability to object to release of grand jury records?

2 A. Yes. I cited to In re Grand Jury

3 Proceedings again.

4 Q. If you look at the screen, is that on page

5 8? Is that where you cited to?

6 A. Correct.

7 Q. And at this point, the state attorney still

8 had not responded to this reason he was named as a party;

9 is that correct?

10 A. Yes.

11 Q. So then on October 14th, 2020, did the

12 state attorney file a reply to this response?

13 A. Yes.

14 MS. WHETSTONE: If could you pull up

15 Exhibit 21.

16 BY MS. WHETSTONE:

17 Q. Is this the state attorney's reply in

18 support of the first place-marker motion for fees?

19 A. Yes, it's in response to their June 2020

20 motion for fees.

21 Q. So this is not a reply to the 57.105 motion

22 we're here on today, right?

23 A. That's correct.

24 Q. This is a reply to the original June

25 place-marker motion for fees, correct?

1       A. Correct. What happened is the state  
2 attorney never noticed the first motion they filed for  
3 fees for a hearing, and they still haven't done that. So  
4 it's never been noticed for hearing.

5           There was a little dispute between myself  
6 and Mr. Wyler as to whether or not the fee motion that he  
7 had filed in June should be heard first or their motion  
8 for summary judgment should be heard first, and there was  
9 a case management conference before Judge Hafele, and  
10 Judge Hafele decided that the state attorney could decide  
11 the order of when that would occur. So not knowing when  
12 -- what hearing would go first, I filed a response to  
13 their fee motion that they filed back in June, and that  
14 was Exhibit 20, and then he responded in Exhibit 21.

15       Q. And I'll call your attention to pages 1  
16 through 2 of Exhibit 21 and the state attorney's reply --

17       A. Yes.

18       Q. -- and where it's highlighted on the  
19 screen.

20       A. Yep, I see that.

21       Q. It says, "Nonetheless, the state attorney  
22 has no objection and never has had any objection to the  
23 clerk releasing the records sought by the plaintiff."

24           Was this the first time the state attorney  
25 -- the state attorney stated his office would not object

1 to the release of grand jury materials if ordered by the  
2 Court?

3 A. Yes.

4 Q. So, after your reply -- sorry -- after your  
5 response on October 2nd, then on October 14th, the state  
6 attorney for the first time stated in a filing that he  
7 had no objection to the production of Epstein grand jury  
8 materials by the clerk?

9 A. That's accurate, yes.

10 Q. Was this a change from the state attorney's  
11 prior position about releasing grand jury materials?

12 A. Absolutely.

13 Q. How would you describe the change from the  
14 initial -- from his initial response to the initial  
15 complaint to this reply?

16 A. Initially they fulfilled why they were in  
17 the case, which is they objected to the release of the  
18 materials under 905.27, and now they were taking a  
19 neutral position, and they were no longer advocating the  
20 supremacy of 905.27 and its secrecy provisions as a bar  
21 or prevention or preventive for the release of grand jury  
22 materials. They were no longer taking that position.

23 They were no longer taking any position.

24 Q. What was your reaction to this change?

25 A. Well, I was pleased.

1       Q. Did you send a letter -- a settlement  
2 letter on October 15th in response to this October 14th  
3 position in the reply?

4       A. Yes. I did it pretty quickly after I saw  
5 it.

6       Q. The next day?

7       A. The next day. Well, I started writing it  
8 on the 14th, but, yes, we sent it on the next day.

9       Q. Okay, and I'll pull up Exhibit 22.

10           Is this your letter to Mr. Wyler with  
11 regard to the reply?

12           A. Yes. Since they had changed to a neutral  
13 position, I didn't see a point in discussing whether or  
14 not they should remain in the case, and that's what the  
15 purpose of this was.

16           Q. And in it you say you were pleased about  
17 them changing --

18           A. Yes, yes. In the second paragraph, I said  
19 I was pleased to read that they -- the state attorney's  
20 clear and unequivocal statement in their response filed  
21 yesterday that their office will not oppose the Post's  
22 request for access to the Jeffrey Epstein grand jury  
23 materials. I was pleased.

24           Q. Once the state attorney's office said that  
25 it would no longer object to release of the grand jury

1 materials by the clerk, what was [REDACTED]s and

2 the Post's response?

3 A. We had a team meeting and ultimately

4 discussion with the Post as to whether or not the state

5 attorney should remain in the case. We had, for the

6 first time, Mr. Aronberg's affidavit. He had previously

7 stated that position, but for the first time in a

8 pleading or an affidavit filed in the case, he said he

9 clearly didn't have possession. And he's now taking a

10 neutral position. Because of the change in position that

11 this neutrality had now created, we had a very serious

12 discussion as to whether or not he should remain in the

13 case because, remember, one of the necessary party prongs

14 that I had mentioned previously was to give Mr. Aronberg

15 the opportunity as state attorney to voice either his

16 objection to the release or his neutrality or maybe his

17 support.

18 Now he decided to change from opposition to

19 neutrality, and, since that was the case, we determined

20 ultimately to drop him from the case, that there was no

21 -- he had exercised his option and made a decision, and

22 we were happy that he had done so.

23 Q. Was -- What date was the state attorney

24 dropped as a party to the action?

25 A. It was in October. Was it October 21st?

1 Q. We'll pull up Exhibit 23.

2 A. Okay, I've got it in front of me. It was  
3 October 21st, 2020.

4 Q. And is this Exhibit 23 the notice of  
5 dropping the state attorney as a party?

6 A. Correct.

7 Q. After this, 19 days after this, did the  
8 state attorney file an amended motion for fees under  
9 57.105?

10 A. He did.

11 Q. Is that the motion we're here on today?

12 A. Correct. That's the only one that the  
13 state attorney has noticed for hearing.

14 Q. We're pulling up Exhibit 25, and, once it's  
15 up, I'd like you to confirm, is this the amended motion  
16 for sanctions that we're here on today?

17 A. Yes.

18 Q. Was this amended motion ever served on you  
19 or the Post anytime before it was filed?

20 A. No.

21 Q. Does the amended motion set forth new and  
22 different BCs for the motion for sanctions than compared  
23 to the first what they call place-marker motion?

24 A. Absolutely.

25 Q. What were some of those new arguments?

1       A. Well, ultimately the major new argument was  
2 that he now had neutrality in the case. That was a  
3 massive change in the position of the state attorney  
4 which was not the situation back when they first made  
5 their place-holder motion, and this is the words they  
6 used back in June. This was a sea change as far as we  
7 were concerned in the status of the case.

8       Q. And you told the state attorney that was  
9 the basis for its joinder back in the beginning of the  
10 case?

11      A. As a necessary party, yes. And, since they  
12 were no longer advocating secrecy and now had adopted  
13 neutrality, that's why we dropped them from the case.

14      Q. And I'll move to what I think is going to  
15 be my last exhibit, the final judgment, which is  
16 Exhibit 30.

17      A. Yes.

18      Q. Did the Post -- So did the Post file a  
19 motion for summary judgment against the clerk --

20      A. Yes.

21      Q. -- as to the declaratory relief claim?

22      A. Yes. They were the remaining party in the  
23 case.

24      Q. And Judge Hafele heard argument on that  
25 motion for summary judgment?

1       A. He heard it for about two and a half hours,

2 yes.

3       Q. And was this the same declaratory judgment  
4 count that had been asserted against the state attorney  
5 that had been dismissed against him after he said he had  
6 no objection to the clerk releasing documents?

7       A. It was Count 1. That was the same count  
8 that we had against the state attorney and the clerk, and  
9 that had been dropped against the state attorney at the  
10 time I argued the motion for summary judgment in front of  
11 Judge Hafele in September of 2020 or August of 2020.

12       Q. And Judge Hafele entered an order on a  
13 motion for summary judgment which became this final  
14 judgment; is that right?

15       A. Correct.

16       Q. And going through it, on page 5, the Court  
17 noted that the Post's position was -- Well, I'll ask you,  
18 what was the Court's reaction in the final judgment to  
19 the presentations given by the Post?

20       A. Ultimately Judge Hafele determined that his  
21 hands were -- while he recognized that the Court had  
22 inherent authority and that inherent authority covered  
23 the supervision of prosecutorial abuse of the grand jury  
24 process, he felt constrained by the statute, which was  
25 905.27. So he felt ultimately that he could not exercise

1 inherent authority because of the limitations that he  
2 thought 905.27 contained, though, without sounding too  
3 egotistical, he was very effusive to the work that  
4 Greenberg Traurig had done, as well as the work done by  
5 the clerk's counsel.

6 Q. So I'll draw attention to page 7. It says,

7 "The newspaper makes strong arguments to advance its more  
8 expansive construction of Section 905" --

9 A. Right.

10 Q. -- "27 as part of furthering justice." And  
11 then page 11, it says, "The Court acknowledges the  
12 newspaper's vibrant and sincere arguments."

13 Was that -- Was that comment with regard to  
14 Count 1?

15 A. Yes.

16 Q. And that's the count we're here on today?

17 A. Correct. That matter is on appeal. The  
18 final judgment is on appeal.

19 Q. Thank you. That was my next question.

20 A. Okay.

21 Q. Okay. Okay, one last question -- sorry --  
22 two.

23 Did you have any discussions with the  
24 editorial side of the Post having anything to do with the  
25 decision to sue the state attorney?

1       A. None. There was a firewall between the  
2 legal arguments we were making here and whatever the Post  
3 was writing both editorially and factually. I had  
4 absolutely no conversations with the Post, nor did any  
5 member of my team as to what they were going to write.  
6 It's not my role to tell the paper what it wants to, or  
7 not, write or not write, so the legal positions that we  
8 adopted in this case were -- were the positions that we  
9 as Greenberg Traurig and the paper came to the conclusion  
10 of based upon the facts and the law.

11           As to what the Post may have wanted to  
12 write or did write, I have zero input into that, nor did  
13 Mr. Grygiel, nor did Ms. Boyajian. I didn't even know  
14 what was going to be printed until I read it in the  
15 paper, so I did not know one word they were going to put  
16 in the paper.

17           Q. Last question. Did suing the state  
18 attorney in this case have anything to do with a personal  
19 vendetta against the state attorney?

20       A. Well, I voted for Mr. Aronberg. No.

21       Q. So no?

22       A. We have a mutual friend. So I have no  
23 animus against him at all. I'm not happy he has me  
24 sitting up here, to be honest with you, but, you know, I  
25 understand why he has me up here. I get that. He's not

1 happy being associated with Mr. Epstein. The man was  
2 reprobate. He was one of the lowest forms of humanity.  
3 So even having my name in an article, even if I'm not  
4 accused of something, I can understand why he's not happy  
5 about it.

6 But I don't -- we didn't do this out of  
7 animus or lack of preparation. This was a sober decision  
8 against someone in their official capacity. I'm sorry  
9 that he feels personally offended by this, but we took  
10 great pains to make sure that there were no allegations  
11 in the amended complaint and the complaint accusing him  
12 of anything or of any wrongdoing of any kind because  
13 that's just not the case that we have in front of us.

14 MS. WHETSTONE: Thank you, Mr. Mendelsohn.

15 Sorry, we went a little long.

16 THE COURT: No, it's okay.

17 Are you going to finish in the next 10  
18 minutes?

19 MR. WYLER: No, Your Honor. That's  
20 impossible for me.

21 THE COURT: So then we're not going to get  
22 started.

23 MR. WYLER: I don't think it would be  
24 worthwhile for me to start and then stop in 10  
25 minutes. It's going to take me at least

1 30 minutes, probably more like 45.

2 THE COURT: Okay, so, you know, from Amelia  
3 Island to here is five hours?

4 MR. WYLER: Yes, sir.

5 THE COURT: You're almost in Georgia.

6 MR. WYLER: Exactly. Your Honor, I will be  
7 here whenever you need me to be here. I'll make  
8 it happen.

9 THE COURT: Thursday or Friday?

10 MR. WYLER: Honestly --

11 THE COURT: How about Thursday?

12 MR. WYLER: -- how about Thursday? Yeah,  
13 Thursday would be better.

14 THE COURT: Okay, all right, we'll come  
15 back in Thursday.

16 MR. MENDELSON: In the afternoon, Your  
17 Honor?

18 THE COURT: Come back Thursday, probably  
19 1:00 p.m. Give me one minute.

20 (Brief interruption.)

21 THE COURT: All right, so the only thing  
22 left is cross examination, redirect, and then are  
23 the parties going to write closing arguments?

24 MS. WHETSTONE: If Your Honor would prefer  
25 it, we'd be fine with that.

1       THE COURT: I prefer closing arguments that  
2 are written. I think things are more coherent.  
3 You know, I think the logic is tighter. If the  
4 parties don't mind writing closing arguments, I  
5 would prefer that.

6       Okay, do you want to bring your closing  
7 argument? I mean, I can anticipate you probably  
8 know what you're going to argue.

9       MS. WHETSTONE: If we could finish the  
10 direct -- the redirect and just make sure we have  
11 the testimony, that we will have the transcript  
12 and add it into the closings or make sure that we  
13 have -- What do you think?

14       MR. WYLER: Your Honor, it's going to be  
15 really hard for me to drive back, and then hand  
16 write it and then drive back down here again.

17       THE COURT: Why don't we do this: Cross  
18 examination, redirect. You'll give me a closing  
19 argument, and you can supplement your closing  
20 arguments in writing. If I need to have an  
21 additional hearing, we can do that via Zoom since  
22 the evidence and presentation will have concluded.

23       MS. WHETSTONE: Sounds good.

24       THE COURT: Sound good?

25       MR. WYLER: Sounds good, yes.

1       THE COURT: All right, so we'll come back

2   Thursday, 1:00 p.m.

3       THE WITNESS: Am I excused, Your Honor,  
4   from the stand?

5       THE COURT: Yes.

6       THE WITNESS: Thank you.

7       THE COURT: I know we have guests. You  
8   know, the Wall Street Journal will write  
9   reprobate. It's a big word. It's a big word.

10      All right, anything else?

11      Have a great day, everybody. We're in  
12   recess.

13      (The hearing adjourned at 4:53 p.m.)

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1                   COURT CERTIFICATE

2

3   STATE OF FLORIDA

4   COUNTY OF PALM BEACH

5

6

7                   I, Lisa Begley, RPR, RMR, certify that I

8                   was authorized to and did stenographically report

9                   the foregoing proceedings and that the transcript

10                  is a true and complete record of my stenographic

11                  notes.

12

13                  Dated this 12th day of September, 2022.

14

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17                  \_\_\_\_\_  
18                  Lisa Begley, RPR, RMR

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**young**

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**Zoom**

139:21

NOT A CERTIFIED COPY

CA Florida Holdings, L.L.C.

*vs.*

Dave Aronberg

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Hearing Before:

Judge Luis Delgado

September 08, 2022

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NOT A CERTIFIED COPY

**PHIPPS REPORTING**

*Raising the Bar!*

IN THE CIRCUIT COURT OF THE 15TH JUDICIAL CIRCUIT  
IN AND FOR PALM BEACH COUNTY, FLORIDA  
CASE NO. 50-2019-CA-014681-XXXX-MB AG

CA FLORIDA HOLDINGS, LLC,  
Publisher of the PALM BEACH POST,

Plaintiff,

vs.

DAVE ARONBERG, as State Attorney  
of Palm Beach County, Florida;  
SHARON R. BOCK, as Clerk and  
Comptroller of Palm Beach County,  
Florida,

Defendants.

TRANSCRIPT OF CONTINUATION OF  
HEARING PROCEEDINGS

RE: Defendant Dave Aronberg's Amended Motion for  
Attorneys' Fees

DATE TAKEN: Thursday, September 8, 2022  
TIME: 1:06 p.m. - 2:42 p.m.  
PLACE: PALM BEACH COUNTY COURTHOUSE  
205 North Dixie Highway  
Courtroom 10D  
West Palm Beach, Florida 33401  
BEFORE: LUIS DELGADO, JR., Circuit Judge

Stenographically reported by:  
Lisa Begley, RPR, RMR

271843

1 APPEARANCES:

2 On behalf of the Plaintiff:  
3 GREENBERG TRAURIG  
4 777 South Flagler Drive  
5 Suite 300 East  
6 West Palm Beach, Florida 33401  
7 561-650-6420  
8 BY: LAUREN R. WHETSTONE, ESQ.  
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12 GERARD BUITRAGO, ESQ.  
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14 On behalf of Defendant, Dave Aronberg:  
15 JACOB, SCHOLZ & WYLER, LLC  
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17 Suite 2011  
18 Fernandina Beach, Florida 32034  
19 904-261-3693  
20 BY: DOUGLAS A. WYLER, ESQ.  
21 doug@jswflorida.com

22 Also present: Dave Aronberg, State Attorney  
23 Defendant  
24 Leigh Miller, Public Records Coordinator  
25 Office of the State Attorney PBC

1

I N D E X

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2 WITNESS

PAGE

3 STEPHEN MENDELSOHN, ESQ.

Cross Examination by Mr. Wyler

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4 Redirect Examination by Ms. Whetstone

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Non-movant rests

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9 Certificate of Reporter

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1 Thereupon,

2 the following proceedings began at 1:06 p.m.:

3 THE COURT: All right, please be seated.

4 All right, announce your presence.

5 MS. WHETSTONE: Good afternoon, Your Honor,  
6 Lauren Whetstone, and with me, Mark Bideau, Gerard  
7 Buitrago and paralegal, Jennifer Thomson, on  
8 behalf of Greenberg Traurig, on behalf of CA  
9 Florida Holdings, the publisher of the Palm Beach  
10 Post, the plaintiff, and our witness, Stephen  
11 Mendelsohn.

12 MR. WYLER: Good afternoon, Your Honor,  
13 Douglas Wyler with the law firm Jacobs, Scholz &  
14 Wyler here on behalf of the State Attorney, Dave  
15 Aronberg, defendant.

16 THE COURT: All right, so we left off with  
17 cross examination? Is that where we are?

18 F MS. WHETSTONE: Yes, Your Honor.

19 MR. WYLER: Yes, sir.

20 THE COURT: Madam Clerk, please swear in  
21 the witness.

22 Sir?

23 THE WITNESS: Oh, I've been sworn in  
24 before.

25 THE CLERK: Do you solemnly swear or affirm

1 that the evidence that you're about to give will  
2 be the truth, the whole truth and nothing but the  
3 truth?

4 THE WITNESS: I do.

5 Thereupon,

6 STEPHEN MENDELSON, ESQ.,

7 having been duly sworn by the Clerk of the Court,  
8 responded and testified as follows:

9 CROSS EXAMINATION

10 BY MR. WYLER:

11 Q. Good afternoon, Mr. Mendelsohn.

12 A. Good afternoon, Mr. Wyler.

13 Q. So I'm going to start off with this: Isn't  
14 it true that part of the exhibits that we've all agreed  
15 on that are here and part of evidence are some of the  
16 portions of our settlement negotiations?

17 A. There is one letter, yes.

18 Q. Okay. And isn't it true you and I talked  
19 several times regarding settlement?

20 A. Sure.

21 Q. And isn't it also true that, during the  
22 pendency of our settlement negotiations, Mr. Aronberg was  
23 contacted by the same reporter that the SAO had  
24 previously prosecuted for illegal substances?

25 MS. WHETSTONE: Objection, Your Honor, no

1 foundation.

2 MR. WYLER: That's fine.

3 THE COURT: All right.

4 BY MR. WYLER:

5 Q. Isn't it true, though, that Mr. Aronberg  
6 and Mike Edmondson contacted you to complain about an  
7 article that was being written about him?

8 A. No, no. I've never spoken to Edmondson  
9 that I remember.

10 Q. Well, okay. That's fine. But you did  
11 speak with Mr. Aronberg, right?

12 A. No. I don't recall speaking to anyone on  
13 this matter, unless he was on the phone with you. Other  
14 than that, no.

15 Q. Okay, well, then part of when we spoke, and  
16 maybe you didn't know, Mr. Aronberg and Mike Edmondson  
17 were on the phone with us, but isn't it true that there  
18 was a time, when you and I spoke in settlement  
19 negotiations, that you offered to hold an article pending  
20 our settlement negotiations?

21 MS. WHETSTONE: Objection, Your Honor,  
22 settlement discussion.

23 MR. WYLER: They opened the door to  
24 settlement negotiations by putting it into  
25 evidence.

1 THE COURT: What exhibit are you talking  
2 about?

3 MR. WYLER: I don't actually have an  
4 exhibit that is part of evidence, but I do have an  
5 exhibit that is not part of evidence that I will  
6 offer to the Court.

9                   A.    That is absolutely untrue.)

10 BY MR. WYLER:

11 Q. So you're saying that never happened?

12                   A.        No.  Mr. Aronberg, through you, suggested  
13                   that in the settlement, that the paper would write a  
14                   favorable article about him if we were able to settle.  
15                   You suggested that.  I didn't make a comment one way or  
16                   the other but I absolutely advised my client of it.

17 I don't make editorial decisions for the  
18 paper, so I have no authority to make such.

19 Q. So you're saying there was never a  
20 conversation between you and I where we discussed  
21 Mr. Aronberg creating a comment to go into the newspaper  
22 as part of those settlement negotiations where you wanted  
23 us to drop our 57.105 demand and you offered to get an  
24 article held while we determined whether we would do  
25 that?

1 MS. WHETSTONE: Objection, Your Honor,  
2 compound, compound.

3 THE COURT: Sustained as compound.

4 BY MR. WYLER:

5 Q. All right, I'll move on.

6 So, in your direct examination the other  
7 day, isn't it true that you stated that you devoted  
8 hundreds of hours to the research and development of  
9 bringing this lawsuit?

10 A. Yes.

11 Q. Okay. And so, in all of that research, you  
12 extensively put time into looking into Chapter 905.27  
13 before you brought this action?

14 A. Yes, sir.

15 Q. And, prior to Judge Marx's June 8th order  
16 on the motion to dismiss Count 2 -- Let me scratch that.

17 Isn't it also true that your client's  
18 complaint alleged against -- that my client was in  
19 possession or control of the documents that are in this  
20 action, the subject of this action?

21 A. I'm sorry, can --

22 Q. I'll repeat it. Isn't it true that your  
23 client's complaints alleged that my client and/or his  
24 office is in, quote, possession and/or control of the  
25 documents that are subject of this action?

1                   A.     Are you reading from the amended complaint?

2                   Q.     That is found at page 117, Bates stamp

3     number 117, paragraph 3 of the first amended complaint.

4     I'll be happy to show it to you.

5                   A.     Well, if you'll just let me know where in  
6     the amended complaint it is, what paragraph.

7                   Q.     Paragraph 3.

8                   THE COURT:   What's the Bates stamp?

9                   MR. WYLER:  117, Your Honor.

10                  A.     Yes, sir, that's part of what I said in  
11    paragraph 3.

12    BY MR. WYLER:

13                  Q.     But there was an allegation that my client  
14    is in possession and/or control of the documents?

15                  A.     In his official capacity as his office is  
16    in possession and/or control of documents that are the  
17    subject of this action. And in the prior sentence, I  
18    quoted Florida Statute 27.03 which provides for the  
19    attorney -- excuse me -- the state attorney to have  
20    authority over grand jury proceedings in the state of  
21    Florida.

22                  Q.     Okay. Isn't it also true in the first  
23    amended complaint that your client admitted that it is  
24    not -- it is not seeking these materials in connection  
25    with either a civil or criminal case and, therefore,

1 sought unlimited access to the requested materials under  
2 905.27?

3 A. Again, that's a compound question. I'm not  
4 sure which one goes first.

5 Q. Isn't it -- If you would look at Bates  
6 stamp page 135.

7 A. I don't have the Bates stamps in front of  
8 me. All I have is the exhibits, sir.

9 Q. Okay. They should be on there, in the  
10 bottom left corner.

11 A. Which one is it?

12 Q. 135.

13 A. Okay. I'm sorry, what is your question,  
14 sir?

15 Q. Didn't you admit on that page that you are  
16 not seeking these requested materials in connection with  
17 either a civil or criminal case?

18 A. A pending -- Right, that is correct.

19 Q. Okay.

20 A. The Post was not seeking these documents in  
21 a pending criminal or civil case involving the Post.

22 That is correct.

23 Q. Thank you. And did you also seek unlimited  
24 access to those requested materials for that reason?

25 A. No, that's not accurate.

1 Q. If you look -- Would you look at Bates --  
2 at that Bates stamp I just provided you?

3 A. Yes.

4 Q. I believe it's on here.

5 A. Are you looking at 135 --

6 Q. Uh-huh.

7 A. -- on Exhibit 9? Yes, I'm looking at that,  
8 sir.

9 Q. Okay, and if you would look at  
10 paragraph 70.

11 A. Sure.

12 Q. And then, do you see -- one, two, three --  
13 the fourth line down, in the sentence that starts with,  
14 "Because..."

15 A. Yes.

16 Q. Okay. It says, "Because the Palm Beach  
17 Post is not seeking these materials in connection with  
18 either a civil or criminal case, it seeks a declaration  
19 that the scope of its use of the disclosed materials is  
20 not limited."

21 A. Right, not limited to a civil or criminal  
22 case, but that the Post had the right under section (c)  
23 of 905.27 in furtherance of justice. We were always  
24 seeking an in-camera inspection of the documents by the  
25 Court prior to any release to the Post.

1                   Q.     Did that argument succeed in your claim  
2     against the clerk?

3                   A.     Which one?

4                   Q.     That you had no connection with the civil  
5     or criminal case and to get unlimited -- to get unlimited  
6     access.

7                   A.     Well, again, we weren't seeking unlimited  
8     access. As I just mentioned, we were always seeking an  
9     in-camera inspection by the Court prior to release to us.  
10    So we were not seeking unlimited access, nor immediate  
11    access to the documents.

12                  Q.     You weren't -- All right, we're going to  
13    move on.

14                  Isn't it true that the other day you  
15    testified that you sued my client because you needed him  
16    not to object to your request for these materials?

17                  A.     I needed him not to object? No. I gave  
18    him the opportunity to do actually three things. One is  
19    to support our request; two, they could have taken a  
20    neutral position; or, three, they could have objected.

21                  Initially, the state attorney's office took  
22    the position to object, and as I think I testified, they  
23    eventually changed the position in October of 2020 to  
24    neutrality.

25                  Q.     And you believe that's a proper basis for

1      **filing this lawsuit against my client?**

2            A.      That they adopted a neutrality position?

3      I'm not clear what you're asking me.

4            Q.      **Oh, no, that you needed him not to object.**

5            A.      That I needed him not to object? No --

6            Q.      **Unless you wanted --**

7            A.      I'm sorry, did I step on you, sir?

8            Q.      **No, you're fine.**

9            A.      No. That I needed him not to object? No,  
10      I gave the state attorney's office the option to make, in  
11      their discretion, to make the decision as to what they  
12      wanted to do vis-à-vis grand jury secrecy. And as I  
13      stated -- You know, if you look at the paragraph you  
14      quoted before, that's paragraph 3 of the first amended  
15      complaint, I cite to Florida Statute 27.03, which gives  
16      the state attorney the authority over grand juries, and  
17      if you look at the cases cited under 27.03, there are a  
18      number of them which say that the state attorney has  
19      very, very broad powers in the conduct of a grand jury,  
20      so --

21            Q.      **Thank you, Mr. Mendelsohn. Let's move on.**

22            A.      Okay.

23            Q.      **In your long practice as an attorney, is it**  
24      **your understanding that clear, unambiguous statutory**  
25      **language has to be enforced as written?**

1                   A.     Well, there are circumstances where the  
2     courts have implied causes of action. That's the famous  
3     United States Supreme Court case of Cort v. Ash where the  
4     Court said that, even if Congress did not specifically  
5     authorize a cause of action, that, in certain  
6     circumstances, if Congress did not bar such, you could  
7     have an implied cause of action. That comes also for  
8     Section 10(b) (5) of the securities laws.

9                   Q.     Okay, but --

10                  A.     And Florida has that, too.

11                  Q.     All right. But, in your research, you  
12     stated that you went through 905.27, right?

13                  A.     Exactly, yes.

14                  Q.     Okay. And you came across this language,  
15     right? I'm going to read this to you: "When such  
16     disclosure is ordered by a Court pursuant to  
17     subsection (1) for use in a civil case, it may be  
18     disclosed to all parties to the case and to their  
19     attorneys and by the latter to their legal associates and  
20     employees; however, the grand jury testimony afforded  
21     such persons by the Court can only be used in the defense  
22     or prosecution of the civil or criminal case and for no  
23     other purpose whatsoever."

24                  You came across that language when you were  
25     doing the research, right?

1 A. Absolutely.

2 Q. And do you recall my client asserting that  
3 as a defense from the beginning, from our first  
4 interaction, first legal filing in this?

5 A. Yes, you made a motion to dismiss arguing  
6 that the Post did not --

7 Q. We'll take a yes. It was a yes or no.

8 A. Well, you asked me if your client did that,  
9 and I was answering it. So the answer --

10 Q. I'll take it as a yes or no.

11 A. May I finish my answer without  
12 interruption?

13 The answer is, yes, you made a motion to  
14 dismiss under 905.27 and asserted that the materials  
15 could only be used in a civil or criminal case. Of  
16 course, we disputed that because of (c), which is the  
17 furtherance of justice language.

18 Q. And did that -- did that argument -- was  
19 this argument successful in your action against the  
20 clerk?

21 A. It was never addressed by the Court.

22 Q. So you're telling me that Judge Hafele  
23 never brought up 57 -- or, 905.27 in his final judgment?

24 A. No. I'm suggesting the way you  
25 characterize it was not the way Judge Hafele decided.

1      Judge Hafele, in his final judgment, said that he felt  
2      constrained by the statute vis-à-vis his inherent  
3      authority as a judge.

4                    While he wanted as a judge to exercise his  
5      inherent authority to allow for disclosure, he felt that  
6      the statute constrained him in doing so because it did  
7      not expressly so state that it could be used outside of  
8      the civil or criminal case. That's what I believe Judge  
9      Hafele said.

10                  Q.     Do you have a copy of the final judgment in  
11     front of you?

12                  A.     Yes. What exhibit is it?

13                  Q.     It's tab 30.

14                  A.     Okay. Okay.

15                  Q.     All right, tab -- or, Bates 1477.

16                  A.     Sure. The newspaper makes strong arguments  
17     to advance --

18                  Q.     No. No, sir. No, sir.

19                  A.     I'm sorry.

20                  Q.     No, sir. Let me redirect -- Let me direct  
21     you to the first paragraph here under Emphasis Added? Do  
22     you see it says, "Reading subsection (1) (c)..."?

23                  A.     Right.

24                  Q.     Could you read that until the cite for the  
25     amended complaint, please?

1                   A.        Right. "Reading subsection (1) (c),  
2        furthering justice," which is in quotes and parentheses,  
3        "in tandem with section (2), it is evident that the  
4        phrase, quote, furthering justice, end quote, is to be  
5        interpreted in the context of seeking disclosure of the  
6        grand jury materials for use in a pending criminal or  
7        civil case."

8                   Q.        **Keep going.**

9                   A.        Yep. "The newspaper acknowledges that it  
10      is not seeking the disclosure of such materials for such  
11      purpose. Instead" --

12                  Q.        **That's it. Thank you, Mr. Mendelsohn.**

13                  A.        But it's not the --

14                  Q.        **Mr. Mendelsohn --**

15                  THE STENOGRAPHER: I'm sorry, I can't take  
16      this.

17                  THE COURT: Gentleman, gentleman, we're  
18      here for trial, and you're being cross-examined --

19                  THE WITNESS: Your Honor, maybe, for the  
20      rule of completeness, I would like to be able to  
21      read the entire sentence.

22                  THE COURT: So right now you're testifying.

23                  It's your witness. What's your next  
24      inquiry?

25                  MR. WYLER: Thank you, Your Honor. May I

1                   continue with this final judgment, Your Honor?

2   BY MR. WYLER:

3                   Q.    I would like you, Mr. Mendelsohn, to flip  
4   to page 1479 of that same final judgment. At the very  
5   top of that page, could you read that first sentence for  
6   me, too -- for me?

7                   A.    "Subsection (2) clearly limits  
8   Section 925.27's (sic) scope as to the instances in which  
9   grand jury testimony or materials need to be disclosed  
10   for use in a criminal or civil case."

11                  Q.    And then -- You can keep going.

12                  A.    "Section (2) provides that, once grand jury  
13   testimony is disclosed in the course of a court  
14   proceeding, it is then open to unlimited dissemination.  
15   Before that occurs, the Court must determine that one of  
16   the three needs prescribed in section (1) is present in a  
17   criminal or civil case that requires disclosure. There's  
18   nothing in Section 905.27 that gives the Court carte  
19   blanche," which he has italics, "authority to release  
20   grand jury materials in any situation that might bear  
21   some relationship to, quote, furthering justice, end  
22   quote, in its broadest sense."

23                  Q.    Thank you. All right, so moving on from  
24   905.27, in your extensive research of this case, did you  
25   also come across Chapter 905.17?

1 A. Sure.

2 Q. Okay, and let me provide that to you, sir.

3 MR. WYLER: This is tab 32 of the -- or, 33  
4 of the Authorities, Your Honor, tab 33.

5 BY MR. WYLER:

6 Q. Do you have it, Mr. Mendelsohn, or would  
7 you like me to provide it?

8 A. It's the amended and supplemental affidavit  
9 of attorneys' fees and costs?

10 Q. You don't have the Authorities binder?

11 A. No, I don't have the Authorities binder.

12 MR. WYLER: May I approach?

13 THE COURT: Yes.

14 BY MR. WYLER:

15 Q. Here's a copy of 905.17.

16 A. Yes, I'm familiar with this provision.

17 Q. Great, okay. And then the very last  
18 sentence of that first paragraph, it starts with, "The  
19 notes, records and transcriptions..." Would you please  
20 read that for the Court?

21 A. I'm not sure where you're directing me,  
22 sir.

23 Q. Let me approach again and show you here.

24 I'm sorry, I didn't have this highlighted for you.

25 Right here, very last sentence of that

1    first paragraph starts with, "The notes..."

2            A.     Yes.

3            Q.     Will you please read that for the Court?

4            A.     Sure. "The notes, records and  
5     transcriptions are confidential and exempt from the  
6     provisions of Section 119.07 subdivision (1), and  
7     Section 24(a), Article 1 of the State Constitution, and  
8     shall be released by the clerk only upon request by a  
9     grand jury for use by the grand jury or on order of the  
10    Court pursuant to 905.27."

11           Q.     Thank you, Mr. Mendelsohn. And do you  
12    recall my client asserting this as a defense to your  
13    claim as well?

14           A.     Yes, yes.

15           Q.     And isn't it true that your client and your  
16    firm and you yourself have been made aware several times  
17    that Mr. Aronberg and his office have no ability to  
18    comply with your declaratory relief claim because they  
19    have no possession, custody or control of those requested  
20    grand jury materials?

21           A.     I'm aware that's your argument.

22           Q.     You're aware that we've made that argument  
23    to you several times, are you?

24           A.     Yes, you made a motion to dismiss and a  
25    motion for summary judgment.

1 Q. And did we also put that argument in our  
2 57.105 demand?

3 A. Yes.

4 Q. Okay. And isn't it true that you and your  
5 client have admitted that the clerk is the only one in  
6 possession and control of those requested grand jury  
7 materials?

8 A. I don't believe so.

9 Q. All right. If I could direct the Court and  
10 you, Mr. Mendelsohn, to tab 20, and it's Bates stamped  
11 262.

12 A. 262? Yes, sir.

13 Q. And then the second paragraph starts with,  
14 "Also..." Can you just read -- Can you just read that  
15 first sentence for me? Or I'll just read it here. It  
16 says, Also, the clerk, who admittedly has both possession  
17 and control of the Epstein grand jury materials, has not  
18 followed the state attorney's lead in seeking sanction of  
19 the Palm Beach Post.

20 It says that in there, correct?

21 A. Well, you didn't read it verbatim, but  
22 essentially that's what it says, yes.

23 It also says the clerk's decision --

24 Q. I didn't ask you what else it says.

25 A. I know, because it doesn't help you.

1 Q. But I didn't ask you that.

2 THE COURT: Gentleman, so this is the  
3 second time, okay?

4 MR. WYLER: Thank you, Your Honor.

5 THE COURT: Let's maintain a little  
6 civility.

7 BY MR. WYLER:

8 Q. Mr. Mendelsohn, in your extensive  
9 involvement in this case, how did you contribute to the  
10 June 3rd, 2020, motion to dismiss hearing?

11 A. How did I?

12 Q. Yeah, or did you?

13 A. I didn't argue the motion, but certainly,  
14 as part of the group, we had discussions as to how we  
15 thought it should be argued, the potential arguments from  
16 the state attorney's office and what we thought would  
17 occur.

18 Q. Did you attend via Zoom or --

19 A. Yes --

20 Q. Okay.

21 A. -- I did.

22 Q. And have you ever read the transcript of  
23 it?

24 A. Some time ago, yes.

25 Q. Okay, so then you were aware of Judge

1 Marx's statements, the ones that I read onto the record  
2 in my opening statement regarding the impossibility of  
3 performance for the records that you requested?

4 A. I know she said that, yes.

5 Q. Okay. Did you agree with Judge Marx's  
6 statements as to an impossibility of Mr. Aronberg being  
7 able to comply?

8 A. I took her statements as complete dicta  
9 since they were not before her as a question on the  
10 motion to dismiss. I did not know what personal  
11 knowledge she had of what the state attorney's possession  
12 or nonpossession was. So I did not credit it as being  
13 anything but a dicta statement from her.

14 Q. So you or your firm, no one objected to  
15 those statements then, correct?

16 A. There wasn't -- I'm not sure what you're  
17 referring to.

18 Q. Was there any objections made to any of  
19 those statements made -- objections or appeals made as to  
20 those statements made on the record in that hearing?

21 A. I don't follow, because you don't make  
22 objections to a judge's comments.

23 Q. Well, through an appeal, you would. Did  
24 you file an appeal as to that motion to dismiss?

25 A. No. It wasn't necessary.

1 Q. Okay. Would you please flip to our Joint  
2 Exhibit Number 14?

3 A. Sure.

4 Q. It's also found at Bates stamp 232.

5 A. Yes, sir.

6 Q. Okay, do you -- do you recognize this as a  
7 copy of my client's 57.105 demand letter and a copy of  
8 the email when it was sent to you?

9 A. Yes, I do.

10 Q. And what day was it sent to you?

11 A. June 8th --

12 Q. Okay.

13 A. -- of 2020.

14 Q. Thank you. And then, if you flip to the --  
15 past the letter, that's Bates stamp 235.

16 A. Yes, sir.

17 Q. Do you -- Do you recognize this as the  
18 motion for attorneys' fees that was sent along with that  
19 motion to -- or, with that 57.105 demand?

20 A. Well, it wasn't a motion. It was an  
21 unsigned proposed motion that you were suggesting would  
22 be filed if we did not act within the 21-day safe harbor  
23 under 57.105.

24 Q. That's right. And that -- Do you know when  
25 this motion for attorneys' fees was actually filed?

1                   A.     July, the beginning of July of 2020, I  
2     believe.

3                   Q.     If I told you July 1, 2020, does that sound  
4     correct to you?

5                   A.     Yes, it does.

6                   Q.     Okay. And is that more than 21 days after  
7     June 8th, 2020?

8                   A.     Yes.

9                   Q.     It's 23 days beyond, my math.

10                  A.     I have no reason to doubt that.

11                  Q.     If you look at -- I quoted in our -- In the  
12     57.105 demand, you'll see a quote of the Chapter 57.105  
13     subsection (1).

14                  A.     What are you referring to now?

15                  Q.     Do you see in my -- the 57.105 demand  
16     letter, still Exhibit 14?

17                  A.     The demand letter that's Exhibit 16?

18                  Q.     No, no, no. Still on 14.

19                  A.     14.

20                  Q.     Bates stamp 233.

21                  A.     233? Yes.

22                  Q.     Okay. Do you see where the 57.105  
23     statute's quoted there in the middle of the page?

24                  A.     Yes.

25                  Q.     Can you tell me anywhere in there there's a

1     **good faith element?**

2           A.     No, because you didn't quote the good faith  
3     element of the statute.

4           **Q.     In subsection (1), is there a good faith**  
5     **element?**

6           A.     I believe there is a good faith element  
7     that wraps around the entire proceeding of 57.105.

8           **Q.     Okay, but in subsection 1 itself, is there**  
9     **a good faith element in that subsection?**

10          A.     No, but there's an additional good faith  
11     provision in 57.105 that you didn't cite to in this  
12     letter.

13          **Q.     Okay. Now, are you referring to 57.105**  
14     **subsection 4? I can show you the statute.**

15          A.     Let me just check here. I'm looking at my  
16     letter of June 23rd. 57.105(3)(a), that's what I was  
17     referring to.

18          **Q.     Okay. All right. And, now, we talked**  
19     **about this before. Can you -- 57.105(3)(a), can you read**  
20     **subsection (a) for the Court?**

21          A.     I don't have 57.105. I have my letter  
22     which --

23          **Q.     I can hand it to you.**

24          A.     Sure.

25          **Q.     Yeah, absolutely.**

1 A. Thank you.

2 Q. You're welcome. 3(a) is right there.

3 A. "Notwithstanding subsections (1) and (2),  
4 monetary sanctions may not be awarded; (a), under  
5 paragraph (1)(b) if the Court determines that the claim  
6 or defense was initially presented to the Court as a good  
7 faith argument for the extension, modification or  
8 reversal of existing law or the establishment of new law  
9 as it is applied -- as it applied to the material facts  
10 for the reasonable expectation of success; (b), under  
11 section" -- excuse me -- "under paragraph (1)(a) or  
12 paragraph (1)(b) against a losing party's attorney, if he  
13 or she has acted in good faith based upon the  
14 representations of his or her client as to the existence  
15 of material facts; (c), under" --

16 Q. I just -- I just needed you to read (a).

17 A. Thank you.

18 A. Oh, I wasn't sure.

19 Q. So under (3)(a), does that apply to  
20 subsection (1)(a) of the statute, or does it only say  
21 (1)(b) there?

22 A. No, if you look at (3)(a) -- if you look at  
23 (3)(b), it says, under paragraph (1)(a) or  
24 paragraph (1)(b) against a losing party's attorney if he  
25 or she has acted in good faith.

1 You're seeking fees against myself and --

2 Q. No, no.

3                   A. -- and Greenberg attorneys, so I read that  
4 as being applicable.

5 Q. Mr. Mendelsohn, you're skipping down to --  
6 That's not what I asked you. 57.105(3)(a), does that  
7 apply to 57.105(1)(a)? Does it say it in the statute?

8 MS. WHETSTONE: Objection, calls for a  
9 legal conclusion.

10 MR. WYLER: No, I'm just asking him to read  
11 it.

12 A. It doesn't say (1)(a) under (3)(a), but I  
13 don't remember the case law as to whether or not, when  
14 you're suing both the client and the lawyer under 57.105,  
15 that both of them can't make the argument of good faith.

16 BY MR. WYLER:

17 Q. But correct me if I'm wrong, it did say,  
18 under paragraph (1)(b), if the Court determines that the  
19 claim or defense was initially presented to the Court as  
20 a good faith argument?

21 A. (1)(b) has good faith in it as well, yes.

22 Q. It doesn't say (1) (a) in there, does it?

23                   A.        I'm confused now as to what you're asking  
24        me.  No offense.

25 Q. Mr. Mendelsohn, that's okay. I'll move on

1 from that. I believe the Court understands what I'm  
2 saying.

3 So back to that 57.105 demand letter.

4 Isn't it true in that demand letter that we asserted that  
5 your client's declaratory relief claim is not supported  
6 by the material facts to establish it?

7 A. That's what you say, yes.

8 Q. Okay, we made that assertion, yes?

9 A. That's what the state attorney asserted.

10 Q. Yes, sir, okay. And, in making that  
11 assertion, didn't he say that neither him or his office  
12 has custody or control of those records and that's it's  
13 impossible for him to provide them? He made that known  
14 to you in that letter?

15 A. That's what he said, yes.

16 Q. Okay. Didn't that letter also say that  
17 your client's declaratory relief claim is unsupported by  
18 the application of the law to those facts?

19 A. Well, in a conclusory way, yes, but not in  
20 any specifics as to why we were wrong.

21 Q. Well, then maybe you should keep looking at  
22 that because, if you flip to the second page of that  
23 57.105 demand letter, do you see Section 905.27(2) quoted  
24 as the reason for that assertion?

25 A. Yes, but if you recall, there was more --

1 Q. Thank you.

2 A. -- there was more than one argument you  
3 were making and more than one argument we were making.

4 Q. A review of this letter makes crystal clear  
5 -- I'm sorry. All right. Okay, let's go to tab number  
6 16.

7 A. Yes.

8 Q. Do you recognize this as the letter where  
9 you rejected our 57.105 demand?

10 A. Yes.

11 Q. Can I direct you to the very last paragraph  
12 of that letter?

13 A. "For these reasons, we decline" --

14 Q. No, sir. No, sir. I'll point you. The  
15 very last paragraph of this letter, it starts with, "Also  
16 assuming..."

17 A. That's actually --

18 Q. Oh, no, I'm sorry, on the second page. I  
19 didn't need that one.

20 A. That's actually the penultimate --

21 Q. Then we'll start with the penultimate  
22 paragraph on 245 --

23 A. Right, I see that, yes. It starts, "Also  
24 assuming..."

25 Q. First sentence, please.

1                   A.     "Also assuming the state attorney does not  
2     have physical possession of the grand jury materials,  
3     there is nothing in Florida law that prohibits the state  
4     attorney from requesting the clerk provide copies to the  
5     state attorney."

6                   Do you want me to keep reading?

7                   Q.     No, sir. Thank you. But I would like to  
8     redirect your attention, again, back to 905.17 and that  
9     statement that you read earlier. It says, "The notes,  
10   records and transcriptions are confidential and exempt  
11   from the provisions of Section 119.07(1) and  
12   Section 24(a) Article 1 of the State Constitution and  
13   shall be released by the clerk only on request by a grand  
14   jury for use by the grand jury or on order of the Court  
15   pursuant to Section 905.27."

16                  A.     Right, I'm familiar with that.

17                  Q.     Okay.

18                  A.     And that section refers to the clerk, not  
19     to the state attorney.

20                  Q.     Thank you. Exactly. Thank you.

21                  A.     So there's nothing to prohibit the state  
22     attorney in this statute from asking the clerk for these  
23     materials.

24                  Q.     All right, isn't there a big difference  
25     between getting access from the clerk for materials and

1 disclosing the materials? Isn't there a difference  
2 between that?

3 A. I don't understand what you're asking.

4 Q. I'll ask you again. Isn't there a  
5 difference between accessing the materials and being able  
6 to disclose the materials?

7 A. Once the clerk provides --

8 Q. No, no, no. It's a yes or no question.

9 A. Then I don't understand what you're asking  
10 me, to be honest with you.

11 Q. Is there -- Is there a difference between  
12 saying, Hey, may I please have these records, versus  
13 saying, Here you go, here's these records, Newspaper?

14 A. Well, what you're -- what you're asking me  
15 is a twofold question.

16 Q. I asked you one question. Is there a  
17 difference between access and disclosure?

18 A. No. Once you access something, it's  
19 disclosed. I don't understand what you're asking me,  
20 sir, I honestly don't.

21 Q. Mr. Mendelsohn, I'm sorry, and I do not  
22 want to have -- I do not want to make the Court angry,  
23 but we've got to stop talking over each other. I'm  
24 asking you a simple question.

25 You stated here that Mr. Aronberg could get

1 access to these records through the Court -- through the  
2 clerk, correct?

3 A. He could ask the clerk for them, and I  
4 didn't -- and I argued that there was nothing in the  
5 statute prohibiting him from asking the clerk for the  
6 clerk to give his office these documents, yes, sir.

7 Q. Okay, sure. Okay, thank you. And so let's  
8 just say that happened.

9 A. Okay.

10 Q. The clerk gives -- Mr. Aronberg asks the  
11 clerk for the records and the clerk gives them to him.

12 A. Okay.

13 Q. That's not what you asked for in your  
14 lawsuit, is it?

15 A. Yes, of course it is.

16 Q. Mr. Mendelsohn, did you not -- does not  
17 your complaint request the complete -- the disclosure of  
18 these records from my client?

19 A. But --

20 Q. You asked -- Did you ask in your lawsuit  
21 for my client to hand these records over?

22 A. No, no.

23 Q. No? Okay.

24 A. No, because we had asked for the records to  
25 be examined by the Court in camera before they were ever

1 to be disclosed to the public. In fact, we stated in the  
2 amended complaint that the Court should review such  
3 documents and redact anything that would identify  
4 witnesses or potential witnesses or those who were not  
5 charged with a crime.

6 So it's inaccurate for you to suggest that  
7 the paper just wanted it handed to them. That was never  
8 the case.

9 Q. Okay. Let's look back at your complaint.  
10 It's tab number 9. We're going to look at Bates stamp  
11 136, and we're going to look at your wherefore clause.

12 A. Tab 9, you say?

13 Q. Yes.

14 A. 136?

15 Q. Yes.

16 A. I see it.

17 Q. Okay.

18 A. "Wherefore, the Post -- the Palm Beach Post  
19 respectfully requests that the Court determine the rights  
20 and obligations of the parties by declaring that,  
21 pursuant to Florida Statute Section 905.27(1)(c) and the  
22 Court's inherent authority, the Palm Beach Post may gain  
23 access to the testimony, minutes and other evidence  
24 presented in 2006 to the Palm Beach County grand jury and  
25 use those materials for the purpose of informing the

1 public."

2 Q. Okay, thank you. And so in there it says  
3 that you're asking for the Palm Beach Post to gain access  
4 to the testimony; is that correct?

5 A. Yes, after the Court examined them in  
6 camera.

7 Q. How else would you gain access to testimony  
8 unless it was disclosed to you?

9 A. I'm --

10 Q. You would not.

11 A. I'm not following what you're asking me,  
12 I'm really not.

13 Q. Would you please look at tab J17.

14 A. Dave Aronberg's motion for attorneys' fees?

15 Q. Uh-huh.

16 A. Okay.

17 Q. It's at Bates stamp 247.

18 A. Right. This is the one you made on July 1,  
19 2020.

20 Q. Correct. And we went through that.

21 Before, you said that was filed at least 21 days after  
22 you received the 57.105 demand, correct?

23 A. Well, you said it was 23, and I agreed with  
24 you.

25 Q. And I said at least 21 days.

1 A. Right.

2 Q. Thank you. So, if I give you this -- Let  
3 me give you this 57.105 statute again and ask you to look  
4 at subsection (4) for me.

5 A. Okay.

6 Q. And if could you read that to the Court.

7 Thank you.

8 A. "A motion by a party seeking sanctions  
9 under this section must be served but may not be filed  
10 with or presented to the Court unless, within 21 days  
11 after service of the motion, the challenged paper, claim,  
12 defense, contention, allegation or denial is not  
13 withdrawn or appropriately corrected."

14 Q. Thank you. And you and your client did not  
15 withdraw the claim for declaratory relief within that  
16 21 days after being served, correct?

17 A. Yes.

18 Q. All right. And then let me have you look  
19 at tab number -- or, our Exhibit Number 23.

20 A. Plaintiff -- Yes, the notice of dropping  
21 State Attorney Dave Aronberg on October 21st, 2020, that  
22 is the one you want me to look at?

23 Q. Yes, that's right. Yep. And that's the  
24 date it was filed, October 21, 2020; is that what you  
25 said?

1 A. Yes.

2 Q. Okay. And is that filing date more than  
3 21 days beyond when you were served with the 57.105?

4 A. You're confusing a lot of things there.

5 Q. No, I'm not. I asked you a question.

6 A. I cannot answer that question, I can't --

7 Q. Okay.

8 A. -- because it's making a number of  
9 assumptions that are inaccurate.

10 Q. No, no, no. That was one simple question.

11 When were you served with the 57.105 demand?

12 A. Which one?

13 Q. No, no, no. You were only served with one  
14 57.105 demand.

15 A. That's correct.

16 Q. Okay. I'm just asking which one.

17 A. Right. I wanted you to pin down what you  
18 did.

19 Q. Okay, you were served with one 57.105  
20 demand.

21 A. Right.

22 Q. What day was that?

23 A. The letter was June 8th, 2020.

24 Q. Okay. And this -- And that gave you  
25 21 days from that date to change your position; is that

1 correct?

2 A. The statute gave me that, yes.

3 Q. Okay. And then when did you actually  
4 change your position and drop Mr. Aronberg?

5 A. We dropped Mr. Aronberg -- When you say  
6 changed position, I don't know what you're referring to.  
7 We dropped Mr. Aronberg as a defendant in this case on  
8 October 21, 2020.

9 Q. Okay, and October 21, 2020, is more than  
10 21 days after June 8th, 2020, right?

11 A. Yes.

12 Q. Okay. So then that fits with the statutory  
13 language then, correct, of what that 21-day -- it gives  
14 you 21 days to withdraw, and you didn't withdraw within  
15 21 days, correct? The statute, 57.105 subsection (4),  
16 gives you 21 days to withdraw the alleged --

17 A. You are confusing a number of things that  
18 are happening, so I cannot answer that question. You're  
19 assuming certain things that are not accurate, so I  
20 cannot answer your question in the manner you put it to  
21 me.

22 Q. Mr. Mendelsohn, it's very simple. I'm just  
23 trying to establish that that -- that you filed your drop  
24 cure -- you dropped the claim against Mr. Aronberg  
25 outside of the 21-day safe-harbor period, correct?

1                   A.     But you never moved -- you never filed a  
2     motion on the first motion you made for fees.

3                   Q.     Okay.

4                   A.     That's not before us. So you're confusing  
5     a safe-harbor for something you've never moved on versus  
6     dropping your client as a defendant after something else  
7     happened.

8                   Q.     Okay, so --

9                   A.     So you're mixing two things together.

10                  Q.     I'm not. I believe you are. Okay, so is  
11     it your position then that, after you dropped Dave  
12     Aronberg as a client, that --

13                  A.     He's not a client.

14                  Q.     After -- Is it your position that, after  
15     you dropped Dave Aronberg as a party from this lawsuit,  
16     it's your position that, after you dropped him, that  
17     another 57.105 demand letter should have been sent to  
18     you?

19                  A.     You didn't give us --

20                  Q.     Just answer my question. After you dropped  
21     Mr. Aronberg from this lawsuit, is it your position that  
22     you should have been served with another 57.105 demand  
23     letter?

24                  A.     Yes. You didn't comply with 57.105 for  
25     your amended motion for 57.105. You did not comply with

1 it. Yes, that is the position.

2 Q. Can you tell me, after dropping  
3 Mr. Aronberg from the lawsuit, how your position -- how  
4 your client's position could have changed if they were  
5 served with another letter being that he was already out  
6 of the lawsuit?

7 A. Well, that's the problem you have because  
8 you served this motion without giving us the safe-harbor,  
9 the amended motion I'm referring to, as well as the fact  
10 that you served it after we dropped him. For  
11 jurisdictional purposes, you can't do that.

12 Q. How could I provide you a safe-harbor if  
13 you had already dropped him from the lawsuit?

14 A. Mr. Wyler, with all due respect, you're  
15 actually making my argument, which is that 57.105 is not  
16 applicable when your client is no longer part of the  
17 case.

18 Q. Well, then I guess we just have differing  
19 views on how to interpret that statute, Mr. Mendelsohn.

20 All right, I just have a few more questions  
21 for you.

22 A. Sure.

23 Q. I'd like to go -- I think I'd like to go  
24 back to that final judgment. That was tab 30.

25 A. Okay.

1                   Q.     All right, all right, I'm on Bates stamp  
2     1473, and I'm at the top of that page, that first  
3     sentence.

4                   A.     The clerk's position? Is that what you're  
5     reading from?

6                   Q.     Yes, yes. That's correct.

7                   A.     "The clerk's position is that he is merely  
8     a custodian of the materials, and, as such, he has no  
9     real interest in the issues before the Court as  
10    identified. The clerk only needs direction from the  
11    Court on whether or not he should produce or disclose the  
12    materials. Nonetheless, the clerk has zealously  
13    advocated the position against disclosure based upon  
14    grand jury secrecy and confidentiality because  
15    Rule 2.420(d)(1)(B)(xvii) of the Florida Rules of General  
16    Practice and Judicial Administration, the clerk is  
17    required to maintain the confidentiality of grand jury  
18    records."

19                  Q.     Yes, will you read the next paragraph, too,  
20    please?

21                  A.     "The clerk is correct that his role as  
22    custodian of the materials is only to follow the Court's  
23    direction once confidentiality is determined. The  
24    clerk's role in this proceeding has been complicated or  
25    expanded because the newspaper filed this action as a

1 civil declaratory judgment action and has moved for  
2 summary judgment under Florida Rule of Civil Procedure  
3 1.510. However, the proper procedure for obtaining  
4 disclosure of confidential Court records is set forth in  
5 Florida Rule of General Practice and Judicial  
6 Administration 2.420(j) which only requires the filing of  
7 a, quote, motion, end quote, seeking disclosure, Florida  
8 Rule of General Practice and Judicial Administration  
9 2.420(j)(2)."

10 Want me to keep going?

11 Q. Yeah, just to the very end of that next  
12 sentence, please.

13                   A.        "Accordingly, the Court will treat the  
14 newspaper's complaint and motion for summary judgment as  
15 a motion for disclosure under Rule 2.42" -- excuse me --  
16 "2.420(j). As a result, the Court need not determine as  
17 a matter of law whether the clerk of the Court is a  
18 proper defendant to the declaratory judgment for the  
19 release of the grand jury materials."

Q. Thank you. All right.

21 A. I'm sorry, was there a question?

22 Q. No. There's going to be. Just one second.

23                           When you filed this lawsuit, were you  
24   familiar with Rule 2.420 of the Rules of Judicial  
25   Administration?

1                   A.     Absolutely.

2                   Q.     Then why didn't you just file a motion like  
3     the rule says -- says you're supposed to if you want  
4     confidential Court records and sued my client instead?

5                   A.     First off, the rule doesn't actually say  
6     that. It says you may file a motion in a pending  
7     criminal or civil procedure. Since there wasn't a  
8     pending criminal or civil proceeding, we didn't view that  
9     motion as being necessary to be made.

10                  Now, this issue is before the Fourth DCA at  
11     the present time, and the clerk's taken the position in  
12     its answer brief that Rule 4 -- 2.420 is ambiguous and  
13     the actual procedure that needs to be followed is  
14     uncertain. And, in fact, the clerk's position is now  
15     that the Supreme Court must reassess how one would seek  
16     grand jury materials.

17                  That was in their answer brief, which I'd  
18     be happy to provide to the Court along with our initial  
19     brief and reply brief, which extensively discusses  
20     Rule 2.420, but also argue that the clerk has now adopted  
21     a position of neutrality when it comes to the release of  
22     the grand jury materials. In its answer brief, it says  
23     it no longer opposes release of the materials.

24                  Q.     Okay.

25                  A.     It is now neutral on that issue.

1                   Q.     Thank you, Mr. Mendelsohn.

2                   In the Court's final judgment, however, it  
3     does say, which you just read to the Court, the proper  
4     procedure for obtaining disclosure of confidential  
5     records is set forth in Florida Rule of General Practice  
6     and Judicial Administration 2.420(j), which only requires  
7     the filing of a motion seeking disclosure; is that  
8     correct?

9                   A.     Yes, but at this time, the state attorney  
10    was not a party, and, in fact, the state attorney has  
11    never made any argument under Rule 2.420 in this case.  
12    It has never made such an argument.

13                  Q.     But you were aware of that rule before you  
14    filed this lawsuit?

15                  A.     Right, and the clerk made this argument  
16    after we dropped the state attorney from this case. That  
17    was the first time the clerk had made such. The clerk  
18    made this argument that the rule was applicable in  
19    opposition to our motion for summary judgment which  
20    occurred after the state attorney had been dropped from  
21    the case.

22                  So this was not an issue in the case either  
23    because your client did not raise it, the clerk did not  
24    raise it, and it was not before the Court until after  
25    your client was no longer a party. So it was not an

1 issue that either you addressed or we addressed as part  
2 of your demand that we withdraw the case.

3 Q. But you still knew about it before you  
4 filed the lawsuit, right? You knew about that rule?

5 A. Of course. Of course.

6 Q. All right, last question for you: Isn't it  
7 true that your client's goal in obtaining these records  
8 from my client was for public disclosure? Was that your  
9 end goal?

10 A. After the Court examined them in camera and  
11 removed witness identification or people who hadn't been  
12 indicted, that was actually discussed very much  
13 extensively in the oral argument before Judge Hafele,  
14 and, in fact, he asked us particularly if I were -- and  
15 using Judge Hafele's words -- inclined to release these  
16 materials to the newspaper and the public -- it wasn't  
17 just the paper; it was simultaneously to the public --  
18 how would I go about redacting them? Would I need to  
19 have someone else, a master, possibly review them? How  
20 would I go about doing it?

21 And we had about a half hour's worth of  
22 discussion as to how to accomplish that if he were  
23 inclined to grant disclosure. So that absolutely was an  
24 issue before Judge Hafele.

25 Q. Great. So then the final goal was -- Was

1 the final goal to have these requested grand jury  
2 materials be able to be disclosed to the public?

3 A. Absolutely.

4 Q. Okay. And that was without any connection  
5 to any underlying civil or criminal case, correct?

6 A. If you're asking me whether or not the Post  
7 was part of a civil or criminal case pending at the time,  
8 no, it was not.

9 Q. You did not -- Did you request these  
10 records as part of a pending civil or criminal case?

11 A. Involving the Post? No --

12 MR. WYLER: Thank you. No further  
13 questions.

14 A. -- other than this lawsuit.

15 THE COURT: Thank you.

16 Redirect examination.

17 REDIRECT EXAMINATION

18 BY MS. WHETSTONE:

19 Q. Good afternoon, Mr. Mendelsohn.

20 A. Yes.

21 Q. Mr. Wyler asked you to read a sentence in  
22 the amended complaint --

23 A. Yes.

24 Q. -- and I'd like to draw your attention to  
25 that, and it's Exhibit 9. I'm going to look at

## 1 paragraph 3.

2 A. Yes, I have that in front of me.

3                   Q.     Can you read the entire paragraph 3,  
4    please?

5 A. Yes, I'd be happy to.

14 Q. So, and I'm actually going to compare --

15 MS. WHETSTONE: And it's on the screen for  
16 Your Honor, too, if that's easier to see.

17 BY MS. WHETSTONE:

18 Q. But we're going to look at paragraph 4 next  
19 because paragraph 4 names the clerk; is that correct?

20 A. Yes.

21 Q. Could you read paragraph 4, please?

22                   A.     Yes. "Defendant Sharon R. Bock is the duly  
23     elected clerk and comptroller of Palm Beach County,  
24     Florida. She is sued here in her official capacity as  
25     her office is in possession and/or control of documents

1 that are the subject of this action."

2 Q. So comparing those two paragraphs, was the  
3 clerk named in a different capacity as the state attorney  
4 in paragraph 3?

5 A. Yes, because, in paragraph 3, I cited to  
6 Florida Statute 27.03, which is the broad grant of  
7 authority to state attorneys to supervise and conduct  
8 grand jury investigations, and that's really what the  
9 situation involved in this case.

10 Q. So you set forth in the amended complaint  
11 that the state attorney was named as having authority  
12 over grand jury proceedings; is that correct?

13 A. Yes.

14 Q. Was the same language in the first  
15 complaint that was filed in November 2019?

16 A. I don't recall.

17 Q. Let's go ahead and pull that up.

18 MS. WHETSTONE: And, Gerard, if you don't  
19 mind, it's Exhibit 4.

20 BY MS. WHETSTONE:

21 Q. And, while you're turning to that, was the  
22 clerk only named in its official capacity as having  
23 possession?

24 A. Yes, that is correct. I'm looking at  
25 paragraph 3 of the original complaint dated 11/14/2019,

1 and it appears that paragraph 3 appears the same.

2 Q. And let's go ahead and blow that up just so  
3 we can close the loop on this.

4 Paragraph 3 of the original complaint is  
5 the same as the amended complaint; is that correct?

6 A. Yes. Both of them cite to Section 27.03  
7 Florida Statutes creating jurisdiction by the state  
8 attorney over all grand juries within their particular  
9 judicial district.

10 Q. So the state attorney was named -- never  
11 named solely because he might have possession, custody --  
12 or custody of the grand jury records from the Epstein  
13 grand jury investigation; is that correct?

14 A. That is correct. The primary reason was  
15 because the state attorney has such authority over the  
16 grand jury process in this judicial district.

17 Now, granted, Mr. Aronberg was not the one  
18 who conducted the Jeffrey Epstein grand jury proceeding.  
19 Nevertheless, we didn't sue Mr. Aronberg in his  
20 individual capacity, only in his official capacity  
21 because he's the successor to State Attorney Krischer.

22 Q. Was there any case law cited in the amended  
23 complaint -- We'll go back to Exhibit 9, please -- any  
24 case law cited in the amended complaint dealing with the  
25 state attorney's official capacity as the protector of

1 the grand jury system?

2 A. You mean paragraph 3?

3 Q. Yes.

4 A. No, I didn't cite to it because it was  
5 clear to anyone who looked at Florida Statute 27.03, they  
6 would see a litany of cases describing the authority of  
7 the state attorney over the grand juries in their  
8 judicial district. So it was obvious that -- what we  
9 were getting at.

10 Q. You cited the statute that gives the state  
11 attorney power over the grand jury?

12 A. Correct, yes. In fact, there are cases  
13 that say that, under this statute, that the grand jury is  
14 essentially the arm of the -- of the state attorney.

15 Q. And now that we're back on the amended  
16 complaint, I'll direct your attention to paragraph 21 --  
17 sorry -- page 21, wherein there is the wherefore clause.

18 Mr. Wyler had you read from one of the  
19 wherefore clauses, but I wanted to ask about the  
20 wherefore clause on page 21 --

21 A. Yes.

22 Q. -- and you had said that you had requested  
23 an in-camera inspection. Actually, could I just ask you  
24 to read this wherefore clause?

25 A. Sure. "The Palm Beach Post respectfully

1      requests that this Court, pursuant to Florida Statute  
2      Section 905.27(1) and the Court's inherent authority,  
3      order the state attorney and clerk of the Court to file  
4      with this Court files of testimony, minutes and other  
5      evidence presented in 2006 to the Palm Beach County grand  
6      jury during the first Jeffrey Epstein sex abuse  
7      investigation so that, following an in-camera inspection,  
8      it can be made available to the Palm Beach Post and the  
9      public on an expedited basis, and grant such other and  
10     further equitable or legal relief the Court deems just  
11     and proper."

12                    Q.     So, in the amended complaint, did you  
13     request an in-camera inspection?

14                    A.     In fact, in our motion for summary judgment  
15     that we made before Judge Hafele, there's a whole section  
16     on that.

17                    Q.     And Mr. Wyler asked you about the  
18     transcript -- the hearing before Judge Marx and that  
19     transcript, and during that hearing, Judge Marx made  
20     comments about possession and custody of the grand jury  
21     records by the state attorney.

22                    I wanted to ask you about the order on that  
23     motion to dismiss. The order was Exhibit 15.

24                    A.     Yes.

25                    Q.     And did Judge Marx's order address those

1 comments that Mr. Wyler read?

2 A. No, she did not. That's why I believe that  
3 they were dicta.

4 Q. And what did Judge Marx's order rule?

5 A. She ruled on a very narrow area, which --  
6 and I respect Judge Marx. She's a very, very seasoned  
7 and reasoned jurist.

8 She determined that, under 905.27, that  
9 there was not a private cause of action, and that,  
10 because it was not a private cause of action, we could  
11 not utilize that statute to seek the grand jury  
12 materials. We disagreed with that, and that is the  
13 subject of the appeal.

14 Q. So turning to the final judgment that was  
15 entered by Judge Hafele, which is --

16 A. 30.

17 Q. -- Exhibit 30, yes --

18 A. Yes.

19 Q. -- Mr. Wyler asked you to read from page 7,  
20 that was Bates number ending 1477.

21 A. Yes.

22 Q. And I'm going to ask you to go ahead and  
23 finish that paragraph, or read the whole paragraph if you  
24 would like.

25 A. Right. "The newspaper makes strong

1 arguments to advance its more expansive construction of  
2 Section 905.27 as part of, quote, furthering justice,  
3 unquote. Unquestionably, the established matters  
4 surrounding Mr. Epstein's conduct, the circumstances of  
5 his resolution of the 2006 state charges and potential  
6 federal charges and his 2008 guilty plea and  
7 incarceration are matters of public interest, and  
8 disclosure of the materials may arguably fall within the  
9 concept of, quote, furthering justice, end quote, in the  
10 broadest social sense of the phrase. "

## 11 Should I keep going, or not?

12 Q. I think that's fine for now.

15 Did the --

16 A. Well --

17 Q. Go ahead, sorry.

18 A. I take issue with the state attorney's

19 assertion that this was only about possession and

20 custody. We were asserting that the Court has inherent

21 authority over the grand jury process and that inherent

22 authority superseded or was preeminent over the statute

23 905.27. That is why we gave the state attorney the

24 opportunity to participate in this case, because we

25 it was only fair to, not only the state attorney, but to

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1 the public to hear a voice for grand jury secrecy. And  
2 the state attorney availed himself of that opportunity.

3 Now, on appeal, we are of the belief that  
4 the Court has such inherent authority and that the  
5 Court's inherent authority is, as I say, superior to the  
6 statute. There are federal cases which say that, and  
7 there are state cases which say that. And, in fact, the  
8 Florida Supreme Court's case -- actually it's a Fifth DCA  
9 case in Clayton says that, where a state attorney may  
10 have abused his authority with the grand jury -- It's not  
11 Mr. Krischer, and it's not Mr. Aronberg, so I'm not  
12 suggesting they are -- but, in that case, it was the  
13 Fifth DCA who said that, I don't care what the statute  
14 says, the Court has authority to control abuses of the  
15 grand jury process, and ultimately that's why we're here.

16 We believe that we've laid out a very  
17 detailed factual and legal reason why we think the prior  
18 state attorney abused his authority. How did he do so?  
19 By obtaining materials from the defense team that  
20 undermined the credibility of the witness and the victim  
21 before the grand jury. We assert that in paragraph 22 of  
22 the amended complaint. It states that in there. And, if  
23 you look at the exhibits, you'll see that.

24 We now know, based upon the Department of  
25 Justice, the U.S. Department of Justice's report, that

1 the clerk's office in Palm Beach County shared these  
2 reported secret grand jury materials with the federal  
3 government without a court order, without notice  
4 apparently to Mr. Aronberg's office or to the public.

5 Now, why they did that, under what  
6 authority they did that, I don't know. Now, whether they  
7 asked Mr. Krischer or whether he consented during the  
8 time of the U.S. Attorney's interactions with the state  
9 attorney, Mr. Krischer's office, we don't know that  
10 either. But we do know that they have been disclosed.

11 Q. **And you're trying to get those materials**  
12 **and --**

13 A. We want the public to have those materials.

14 Q. **Right.**

15 A. Not me.

16 Q. **The public.**

17 A. The public. The Post is only a conduit for  
18 the public. That's what the media is under the First  
19 Amendment. Without the media acting as the conduit for  
20 the public, the public does not have the authority, the  
21 time or the resources to inform the public of what's  
22 going to happen.

23 Imagine if Joe Public or Jane Public came  
24 and brought this lawsuit. Would it have gone anywhere?  
25 No. Thank God for the First Amendment that the Post has

1 the right constitutionally to seek these materials.

2 I know I'm going off on a tangent, but it's  
3 important.

4 THE COURT: You are. So let's move on.

5 THE WITNESS: Thank you.

6 BY MS. WHETSTONE:

7 Q. Thank you, Mr. Mendelsohn. Now let's go  
8 back to the demand, the first motion for sanctions that  
9 was that one-page motion, and that was served on  
10 June 8th, 2020.

11 A. Yes.

12 Q. And the demand was Exhibit 14.

13 A. Yes.

14 Q. And Mr. Wyler had asked you some questions  
15 about the letter that was enclosed with that motion and  
16 was the basis for the sanctions motion that was attached  
17 dealing with possession or custody of the grand jury  
18 materials by the state attorney's office.

19 A. I'm sorry, I don't understand your  
20 question.

21 Q. Sure. He had asked you whether there was a  
22 basis for the first motion for fees, and the basis is set  
23 forth in this enclosure letter; is that correct?

24 A. Right. Their position was that the  
25 Statute, 905.27, and -- yes, 905.27 did not provide a

1 private right of action, yes.

2 Q. So 905.27, that statute is not the claim  
3 that we're here on today, correct?

4 A. That is correct. Count 1 was broader than  
5 that.

6 Q. And, when it comes to -- Mr. Wyler said  
7 something about possession or custody of the state  
8 attorney. He referenced that the state attorney does not  
9 have possession or custody in this letter, correct?

10 A. Correct.

11 Q. But the reason for naming the state  
12 attorney in the complaint, the initial complaint and the  
13 amended complaint, was broader than his own possession or  
14 custody?

15 A. Correct. As the entity charged by Florida  
16 law with the supervision of the grand jury proceeding,  
17 that included as well the protection of grand jury  
18 secrecy, and we named him in his official capacity, if he  
19 so chose, to protect grand jury secrecy, which he did in  
20 a motion to dismiss and the motion for summary judgment  
21 he filed opposing the release of the materials to the  
22 public.

23 Q. So that first motion for fees was filed  
24 July 1st, 2020; is that correct?

25 A. The first motion, yes.

1 Q. Yes. And did the state attorney ever set  
2 that motion, original motion for fees for hearing?

3 A. Never.

4 Q. And we are not here on that first motion;  
5 is that correct?

6 A. Correct. They never set it for a hearing.

7 Q. So we're here on the amended motion for  
8 sanctions which was filed November 9th, 2020; is that  
9 correct?

10 A. Correct. And, in fact, the amended motion  
11 and the notice of hearing does not mention the first one  
12 from July of 2020.

13 Q. So you never got a notice of hearing that  
14 set the original first -- July 1st, 2020, motion for fees  
15 for hearing; is that correct?

16 A. That is correct, yes.

17 Q. And you never got a copy via mail or fax or  
18 hard copy of the amended motion for fees filed  
19 November 9th prior to the time it was filed, correct?

20 A. That is correct. We weren't given the  
21 21-day safe harbor.

22 Q. Why did you -- Why did the Post decide to  
23 drop the state attorney when it did?

24 A. The state attorney's position changed from  
25 one of opposition to the release of the grand jury

1 materials to one of neutrality. Once the grand jury --  
2 Once the state attorney changed the position, then the  
3 Post re-evaluated whether or not he should remain in the  
4 case, and we determined that he should be dropped from  
5 the case.

6 Q. At that point, had the Post accomplished  
7 everything that it needed from the state attorney in the  
8 amended complaint?

9 A. Yes. We had given him the opportunity to  
10 voice objection or non-objection. He originally voiced  
11 objection, then he changed it to neutrality. That was  
12 his decision, and there was nothing further that needed  
13 to be stated.

14 Q. And, at that point, when the Post decided  
15 to dismiss the state attorney on October 21st, 2020, had  
16 the Post accomplished everything that was set forth in  
17 your June 23rd, 2020, letter, those three reasons?

18 A. Yes. We had given the state attorney his  
19 opportunity to be heard, and he took it and then decided  
20 he no longer needed it.

21 Q. And, finally, the -- you mentioned that the  
22 final judgment on Count 1 regarding declaratory relief is  
23 currently on appeal.

24 A. Yes, Count 1 is, yes.

25 Q. And does the state attorney need to be

1 named in that appeal?

2 A. No.

3 Q. Why not?

4 A. Well, the appeal was taken on Count 1 as  
5 you say. Count 1 had a number of elements associated  
6 with it. That's the declaratory judgment provision. It  
7 asserted that, under the First Amendment, both the U.S.  
8 Constitution and the Florida Constitution that the Post  
9 had standing or the right to seek these grand jury  
10 materials, and the statute was complementary to that  
11 First Amendment right by the language in the statute,  
12 905.27, of it being in furtherance of justice.

13 We also asserted that the Court had  
14 inherent authority over and above 905.27. If the  
15 appellate court were to determine that 905.27 was in  
16 conflict with the Court's authority, that the Court's  
17 authority was superior to 905.27. So if it's unclear --  
18 So there were a number of elements, a constitutional  
19 element, the Court's constitutional inherent authority as  
20 described by the Florida Supreme Court and that we  
21 believe that the reading of the statute that read out in  
22 furtherance of justice or tied it exclusively to a  
23 pending civil or criminal case was too narrow a reading  
24 of the statute.

25 Q. So the state attorney has stated his

1 affirmative non-objection to the clerk releasing the  
2 grand jury materials from the Jeffrey Epstein case if  
3 ordered by the Court?

4 A. Yes. That was why we dropped the state  
5 attorney.

6 Q. On October 14th --

7 A. Correct, yes.

8 Q. -- that was the first time he filed that  
9 affirmative statement --

10 A. Yes.

11 Q. -- that he didn't object?

12 A. That's absolutely right, yes.

13 Q. And the clerk no longer objects to the  
14 release of the grand jury materials if ordered by the  
15 Court in the Fourth DCA appeal?

16 A. Yes. In their answer brief, the clerk took  
17 the position that it had no opposition at all to the  
18 release of the materials, which was contrary to the  
19 position they took against our motion for summary  
20 judgment.

21 MS. WHETSTONE: No further questions.

22 THE COURT: Is this witness excused?

23 THE WITNESS: Thank you, sir.

24 MS. WHETSTONE: Yes.

25 THE COURT: All right, thank you, sir.

1 MS. WHETSTONE: If I may approach, I'll  
2 take the exhibit binder.

3 THE WITNESS: These are for Mr. Wyler.

4 Thank you.

5 THE COURT: Next witness.

6 MR. WYLER: May we call a rebuttal witness?

7 MS. WHETSTONE: Your Honor, there's no  
8 rebuttal witness listed on the --

9 MR. WYLER: Well, as to the statements that  
10 Mr. Mendelsohn said at the beginning denying the  
11 conversation where he, you know, put it on us to  
12 -- you know, he said that he would hold the filing  
13 of an article while settlement negotiations were  
14 pending.

15 MS. WHETSTONE: And, Your Honor, those  
16 settlement discussions were never entered into  
17 evidence, never even attempted to enter into  
18 evidence, and we object to those being entered  
19 into evidence now.

20 THE COURT: Settlement negotiations are  
21 excluded by statute. All right, so no.

22 MR. WYLER: Okay.

23 MS. WHETSTONE: Thank you, Your Honor.

24 THE COURT: Is there anything else?

25 MR. WYLER: Other than -- No, Your Honor.

1                   THE COURT: Okay. Then, I guess, both  
2 parties have rested at this point?

3                   MS. WHETSTONE: I was going to ask if Your  
4 Honor wanted copies of the appeal brief and the  
5 reply that had been filed in the Fourth DCA?

6                   THE COURT: It's not in evidence, no.

7                   MS. WHETSTONE: Then the non-movant rests.

8                   THE COURT: All right. So everybody's  
9 rested. I have your joint --

10                  MS. MILLER: Can we have just a moment,  
11 please?

12                  THE COURT: I'll take a moment. I'll be  
13 back in five minutes.

14                  (Off the record from 2:20 p.m. to 2:35  
15 p.m.)

16                  THE COURT: Please be seated.

17                  Everyone get a chance to confer with who  
18 they need to confer with?

19                  MR. WYLER: Your Honor, thank you. We'd  
20 ask if you might reconsider the rebuttal witness.  
21 It's not based on settlement. It's really based  
22 on the direct testimony yesterday of  
23 Mr. Mendelsohn saying that there was a firewall  
24 between the legal team and the news team, and our  
25 witness can directly contradict that.

1 MS. WHETSTONE: Your Honor, we object to  
2 this as not on the witness list, which we have  
3 agreed, and having no issue that needs to be  
4 raised. You could have asked Mr. Mendelsohn about  
5 -- and you could have asked Mr. Aronberg about his  
6 own recollection of that instance.

7 MR. WYLER: I could call Mr. Aronberg then  
8 as a rebuttal.

9 THE COURT: I'm sorry?

10 MS. WHETSTONE: Objection, it's not  
11 relevant to the motion at all.

12 THE COURT: I agree. All right, I will not  
13 reconsider.

14 MR. WYLER: Thank you, Your Honor.

15 THE COURT: Closing arguments. All right,  
16 now, I think what we discussed last time we were  
17 here was that you would give me your closing  
18 arguments, and, if you needed to supplement, I'll  
19 give you time to supplement in writing.

20 Is that what you all want to do, or do you  
21 want to conclude today?

22 MR. WYLER: I would prefer to provide you a  
23 written closing argument if possible.

24 THE COURT: Instead of --

25 MR. WYLER: Yeah, I absolutely would. I

1 think that there's a lot of -- there's a lot going  
2 on here, and I think it might be beneficial to the  
3 Court if you would -- if you would allow us. I  
4 will give you -- I'd be happy to give you a  
5 written closing argument. I think it could help  
6 you in formulating your final judgment, whichever  
7 way you go.

8 MS. WHETSTONE: Your Honor, I prepared a  
9 closing argument, but -- and I can also write one.  
10 I was planning on doing a supplemental one anyway.

11 THE COURT: Well, I'm asking you, you know.

12 MS. WHETSTONE: I think it would probably  
13 be more -- if you were going to do one or the  
14 other, I think written closing arguments, we could  
15 really lay out, you know --

16 THE COURT: Yeah, I joked about it earlier,  
17 I think people are better in writing. A lot of  
18 people, when they try to go off the cuff or deal  
19 with the changes they experienced during a trial,  
20 they miss things. I do think people are better in  
21 writing.

22 How much time do you need to prepare a  
23 written argument?

24 MR. WYLER: If you could give us a week,  
25 that would be great.

1                   THE COURT: Okay, I'm going to give you  
2 some guidance because there's something I do want  
3 to hear from you.

4                   I do want you to address Lago. And,  
5 Ms. Whetstone, when I read In re Grand Jury  
6 Proceedings, in those cases the state attorney was  
7 subpoenaed, they were not a party to the case, and  
8 I want you to address that as well.

9                   How much time do you need to prepare your  
10 closings?

11                  MR. WYLER: If you could give us a week,  
12 Your Honor, that would be terrific.

13                  THE COURT: I'll give you a week.

14                  Ms. Whetstone, is a week sufficient?

15                  MS. WHETSTONE: Yes, Your Honor, a week is  
16 sufficient.

17                  THE COURT: I'll give you 10 days. I would  
18 also like a copy of the transcript attached.

19                  MR. WYLER: Then we might need a little  
20 more time to get it.

21                  MS. WHETSTONE: Your Honor, could we ask  
22 for 20 days?

23                  THE COURT: I'll give you three weeks.

24                  I'll give you three weeks. Give me your -- your  
25 written closings and proposed orders.

1                   Give me one more minute. There might be  
2                   something else I want you guys to address.

3                   In the event that I agree with  
4                   Mr. Aronberg, the amounts have been stipulated to,  
5                   correct?

6                   MS. WHETSTONE: No, Your Honor, they have  
7                   not been stipulated to. We submitted a bench memo  
8                   that objects to the majority of the fees.

9                   THE COURT: I saw that. Travel time.

10                  MS. WHETSTONE: Yes, Your Honor.

11                  THE COURT: Okay.

12                  MR. BIDEAU: But the rates have been  
13                  agreed. We're not contesting the rate. They  
14                  didn't need to bring an expert to talk about the  
15                  rate. Our argument was on legally whether some of  
16                  these -- some of these fees were -- were  
17                  recoverable.

18                  THE COURT: You can be seated. Give me a  
19                  second.

20                  MS. WHETSTONE: Oh, okay.

21                  THE COURT: I want you to address  
22                  Weatherby. One of the cases submitted, Weatherby.

23                  MR. WYLER: Weatherby? Yes, sir.

24                  And, Ms. Whetstone, I want you to address  
25                  In re Grand Jury on that issue regarding --

1 because there is a difference, Mr. Aronberg in his  
2 official capacity as a named party, and In re  
3 Grand Jury, I think in that case, I think the  
4 state attorney's was subpoenaed.

5 And I also want you -- well, both parties  
6 to address the Horowitz case where it says that  
7 the judge can extend the law because it's an  
8 obligation of legislative authority.

9 All right, so you'll give me your arguments  
10 and proposed orders within 21 days.

11 Do I need to bring you back in for a  
12 hearing?

13 MS. WHETSTONE: No, Your Honor.

14 MR. WYLER: No, Your Honor.

15 THE COURT: Okay. All right, then we'll be  
16 in recess. Thank you very much, everybody.

17 MR. WYLER: Thank you, Your Honor.

18 MS. WHETSTONE: Thank you, Your Honor.

19 THE COURT: Have a great day.

20 (The hearing concluded at 2:42 p.m.)

21

22

23

24

25

Dated this 13th day of September, 2022.

I, Lisa Begley, RPR, RMR, certify that I  
was authorized to and did stenographically report  
the foregoing proceedings and that the transcript  
is a true and complete record of my stenographic  
notes.

COURT CERTIFICATE

COUNTY OF PALM BEACH

STATE OF FLORIDA

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