

MEETING HELD BEFORE SPECIAL MASTER ROBERT CARNEY

IN RE:

IN THE CIRCUIT COURT OF THE 15TH JUDICIAL
CIRCUIT IN AND FOR PALM BEACH COUNTY, FLORIDA

Complex Litigation, Fla. R. Civ. Pro.1201

CASE NO. 50 2009CA040800XXXXMB AG

JEFFREY EPSTEIN,

Plaintiff,

vs.

SCOTT ROTHSTEIN, individually,
BRADLEY J. EDWARDS, individually,
and ■■■., individually,

Defendants.

DATE TAKEN: Tuesday, March 15, 2011
TIME: 10:05 AM - 12:35 PM
PLACE: SEARCY DENNEY SCAROLA BARNHART &
SHIPLEY
2139 Palm Beach Lakes Boulevard
West Palm Beach, Florida 33409

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APPEARANCES:

FOWLER, WHITE, BURNETT, [REDACTED]
BY: LILLY ANN SANCHEZ, ESQUIRE
JOSEPH ACKERMAN, ESQUIRE
CHRISTOPHER KNIGHT, ESQUIRE
One Financial Plaza - 21st Floor
100 Southeast 3rd Avenue
Fort Lauderdale, Florida 33394

FARMER, JAFFE, WEISSING, EDWARDS, FISTOS & LEHRMAN,
P.L.

BY: BRADLEY EDWARDS, ESQUIRE
425 N. Andrews Avenue - Suite 2
Fort Lauderdale, Florida 33301

SEARCY DENNEY SCAROLA BARNHART & SHIPLEY
BY: JACK SCAROLA, ESQUIRE
2139 Palm Beach Lakes Boulevard
West Palm Beach, Florida 33409

ALSO PRESENT:

MARTIN WEINBERGER, via telephone

1 THEREUPON,

2 (The following meeting took place):

3 SPECIAL MASTER CARNEY: We've got, it looks
4 like, two matters right now. I have some
5 suggestions, but [REDACTED] certainly open to
6 suggestions.

7 One, we are meeting to take a look at the
8 privilege log and see whether we have problems
9 with the privilege log; and if we have
10 problems, what needs to be done to correct the
11 problems. Two, we have a Request for Sanctions
12 and we need a resolution on the Request for
13 Sanctions.

14 It seems to me that probably the first thing
15 on the agenda, because it certainly would play
16 into either one, is a determination: Do we
17 have a problem with the privilege log? And if
18 so, what's the problem and what is there to
19 correct it? So, why don't we begin with that.

20 MR. SCAROLA: Before we get underway with
21 that specific business. On the record, I want
22 to renew our request to a stipulation that you
23 be appointed as Special Master in the State
24 Court proceedings.

25 SPECIAL MASTER CARNEY: Response?

1 MR. KNIGHT: At this time, let's see where
2 all this goes. We haven't brought that under
3 consideration with our client. We need to speak
4 with him.

5 MR. SCAROLA: Well, that request has been
6 made repeatedly over an extended period of time
7 and I think it is clearly an indication of the
8 bad faith of Mr. Epstein that has been --

9 SPECIAL MASTER CARNEY: Actually, I believe
10 that plaintiff had actually written a letter and
11 agreed to that quite sometime ago. That was
12 actually in one of the responses I think by Mr.
13 Ackerman.

14 MR. KNIGHT: Well, obviously, we've had
15 these requests out since last July. They are
16 properly before Judge Rey and properly before
17 you at this point. It is not a decision that we
18 need to make today. We believe we have good
19 grounds on these TIG objections. It is close to
20 what should have been accomplished over the last
21 six, seven, eight months now. And so, we note
22 Mr. Scarola's comment for the record.

23 We want to address the two issues that are
24 here today and we can address those other issues
25 at a later time.

1 MR. SCAROLA: And it is our position that
2 those issues cannot be properly addressed unless
3 and until there is a State Court ruling with
4 regard to the discoverability of the information
5 that has been requested which appropriately must
6 proceed any requirement that a privilege log of
7 any kind be submitted.

8 SPECIAL MASTER CARNEY: What I would
9 suggest, ■ viewing the determination of or the
10 presentation of me as a Special Master in the
11 State Court can be divided up into either
12 initially yes, no. If the answer is yes, we
13 still don't have duties yet within the State
14 Court.

15 Ultimately, it seems to me that probably
16 the issue at this point, I don't think anyone --
17 ■ looking back on Mr. Ackerman's letter. I
18 think that the letter had pretty much indicated
19 a copy of this would certainly go to Judge
20 Rey. Actually, I believe that part of the
21 decision-making process in that letter was to
22 Judge Rey or, excuse me, to Judge Crow.

23 I don't think anyone is really disputing
24 particularly that Judge Crow need be involved in
25 some fashion or another because he is the

1 presiding judge over the case.

2 And so, these are things that historically
3 there have been agreements, but we're not
4 necessarily seeing fruition on the agreements.
5 We get an agreement and that seems to be kind of
6 the last we hear of it.

7 But ■■■ not necessarily sure that I agree
8 with what Mr. Scarola did. Right now we have to
9 have a resolution as to what role Judge Crow
10 would take vis-a-vis this matter as opposed to
11 Judge Rey. But it seems to me it's easy enough
12 to at least get to a stipulation that at least
13 both are in play somewhat. It seems to me it's
14 pretty hard to determine that Judge Crow isn't
15 in play if he's the presiding judge.

16 MR. KNIGHT: We just don't like creating
17 delay by that for Judge Rey of which I think the
18 different machinations that come from this
19 proceeding that's been --

20 SPECIAL MASTER CARNEY: ■■■ not saying any
21 delay --

22 MR. KNIGHT: We're not saying you are. If
23 we entered into that stipulation now, I think we
24 would do it right before Judge Crow, we would
25 lose any momentum that we have right now for

1 Judge Rey. We want to get on to the actual
2 issues, the same ones we've been asking for.

3 SPECIAL MASTER CARNEY: I agree completely
4 on that. But [REDACTED], again, not necessarily sure
5 that we have a particular problem. The reason
6 [REDACTED] saying that is when this went in front of
7 Judge Crow, Judge Crow, basically, washed his
8 hands of it and said it's in front of the
9 Bankruptcy Court. Let the Bankruptcy Court
10 decide it. It looks like that's exactly what's
11 going to happen.

12 The only issue that [REDACTED] seeing right now
13 with respect to Judge Crow is there ought to
14 be something in there that Judge Crow ratifies
15 what the Bankruptcy Court judge does. Otherwise,
16 we're left hanging in the wind. Whatever
17 happens here is not binding at all on the State
18 Court judge. The State Court judge can do
19 whatever he wants.

20 MR. SCAROLA: Respectfully, and maybe we're
21 saying the same thing but in different ways,
22 Judge Crow expressly ruled that he will make a
23 determination as to what is discoverable in the
24 State Court proceedings; that he deferred to
25 Judge Rey for purposes of Judge Rey determining

1 anything that was pending in the Bankruptcy
2 Court without that having any binding impact
3 upon his decisions with regard to what is
4 discoverable in the State Court.

5 The representations were made to Judge Crow
6 at the time that he made that ruling that there
7 was an independent basis upon which the
8 discovery was being sought in the Bankruptcy
9 Court, that is, that it was not only a State
10 Court subpoena that was issued to the Trustee,
11 but that there were independent discovery
12 requests that were made in the bankruptcy
13 proceeding upon which Judge Rey was proceeding.

14 Now, I don't believe that to have been
15 accurate, but those are the representations that
16 were made to Judge Crow. And on that basis,
17 Judge Crow said Judge Rey can do whatever he
18 wants to but I, Judge Crow, am deciding what is
19 discoverable in my case. That's where that
20 stands.

21 SPECIAL MASTER CARNEY: Which I think he
22 absolutely has the authority to do. I have
23 indicated from the very outset, because it is a
24 State Court action and the final arbiter of that
25 State Court action is Judge Crow, the one who is

1 really the best one to resolve this in my view
2 is and always has been Judge Crow.

3 Judge Rey is doing it. Judge Crow has
4 deferred to Judge Rey. All [REDACTED] interested in
5 doing right now is putting Judge Crow in the
6 loop in a fashion where Judge Crow can agree or
7 disagree with whatever my findings are as a
8 Master.

9 Now, unless and until [REDACTED] appointed as a
10 Master in the State Court, he can't do that.
11 And as I say, that leaves us hanging in the wind
12 at that point. I don't think he can on his own
13 simply sua sponte say, [REDACTED] adopting the findings
14 of the Special Master. I think that would
15 create all kinds of appellate issues if we did
16 that.

17 MR. SCAROLA: Nor do I think that the
18 plaintiff should be in the position of waiting
19 to see what your rulings are and then deciding
20 whether the plaintiff wishes to stipulate to
21 those rulings as a recommendation in the State
22 Court.

23 The time to make that decision is now. And
24 if they don't choose to make it, they don't
25 choose to make it. But I want the record to be

1 absolutely clear that we are offering to allow
2 your rulings to be binding as rulings of the
3 Special Master in the State Court proceeding as
4 well as the Bankruptcy Court proceeding. We're
5 willing to go so far as to --

6 SPECIAL MASTER CARNEY: Let me backup for
7 just a second, because it's the "binding" that's
8 the word that's causing a little bit of a
9 problem for me.

10 MR. SCAROLA: I understand and I was about
11 to address that.

12 (Telephone Rings)

13 (WHEREUPON, an off-the-record discussion
14 was had).

15 MR. SCAROLA: The stipulation that we are
16 offering is that you serve as Special Master
17 in the State Court. We go beyond that and we
18 will agree that we will waive any appellate
19 rights that we might have, including appellate
20 rights to the Circuit Court judge, and allow
21 your rulings to be binding within the State
22 Court proceeding. They can accept all or any
23 portion of that stipulation or reject it in its
24 entirety.

25 SPECIAL MASTER CARNEY: ■ not necessarily

1 anything by not calling in earlier.

2 SPECIAL MASTER CARNEY: Do you want to go
3 around the table so he knows who is here?

4 MR. ACKERMAN: Yes. Joe Ackerman is here,
5 Marty.

6 MR. WEINBERGER: Good morning, Joe.

7 MR. KNIGHT: Chris Knight.

8 MR. WEINBERGER: Hi, Chris.

9 MRS. SANCHEZ: Hi, Marty. Lilly Sanchez.

10 MR. WEINBERGER: Hi, Lilly.

11 MR. SCAROLA: Jack Scarola and Bradley
12 Edwards.

13 MR. WEINBERGER: Good morning to you both.

14 SPECIAL MASTER CARNEY: And Robert Carney.

15 MR. EDWARDS: Hi.

16 SPECIAL MASTER CARNEY: As I had mentioned,
17 the problem that ■ seeing if we have simply
18 both judges copied, as long as we have both the
19 judges making rulings, we have the possibility
20 of inconsistent rulings. Therein, we have a
21 problem.

22 The solution I think, ultimately, is because
23 it is a Judge Crow case and it's being handled
24 in State Court and it's a pure State Court
25 action, ideally, is to have the Special Master

1 appointed in the State Court and then have Judge
2 Crow actually be the one ruling on the
3 objections, if there are any objections, but
4 have the report go back with a copy to Judge
5 Rey.

6 Now, any issues that are exclusively Judge
7 Rey issues for which Judge Crow would have no
8 interest in would be in front of Judge Rey. But
9 where there are State Court issues for which
10 Judge Crow would ultimately make the final
11 decision as to admissibility in court, as to
12 discoverability, as to whatever, it seems to me
13 the obvious choice is to have Judge Crow rule on
14 those and not be in a position of a potentially
15 dueling judges' orders.

16 MR. KNIGHT: I understand what you've said,
17 and I'll fill Marty in more on the part he
18 missed. We'll get back to that.

19 SPECIAL MASTER CARNEY: Let's take a look at
20 the privilege log right now. We can come --

21 MR. SCAROLA: Let me just make sure that my
22 position is clear. I agree with everything that
23 you have said. Obviously, you can only be
24 appointed as Special Master in the State Court
25 proceeding upon stipulation of the parties.

1 SPECIAL MASTER CARNEY: I agree. Actually,
2 and by order of the court. It's still going to
3 take a court order.

4 MR. SCAROLA: Well, yes and no. Yes, it
5 would take a court order for you to be appointed
6 as Special Master to follow the proceedings that
7 we have described. The parties are also free to
8 agree to arbitrate these issues --

9 SPECIAL MASTER CARNEY: Oh, absolutely.

10 MR. SCAROLA: -- to make your decision a
11 binding arbitration decision with regard to the
12 discovery of these documents. We are offering
13 to do both. We are offering to have you
14 appointed as Special Master in the State Court
15 and to follow the proceedings that ordinarily
16 are followed with regard to a Special Master's
17 appointment where you report to the court.

18 There is a possibility for objections being
19 made. The court rules on those objections.
20 Accepts, rejects or modifies the report of the
21 Special Master. We agree to that procedure.

22 We also go a step further. We are willing
23 to allow all of these discovery issues to be
24 resolved by binding arbitration. To have you as
25 Special Master become the arbiter, the final

1 arbiter of these discovery issues.

2 If the plaintiff is, in fact, interested in
3 the expedited resolution of these issues, the
4 fastest way to get them resolved is to agree to
5 that procedure. I don't think they've ever been
6 interested in that.

7 Their rejection of our proposal that you be
8 Special Master in the State Court proceedings
9 indicates they have no real interest in that.
10 Their refusal to agree to have these issues
11 arbitrated by you is a further indication that
12 they have no interest in that.

13 This is an abuse of process from beginning
14 to end and all of these discovery proceedings
15 are part of that abuse of the court's process.
16 That's our position. Let them do with it
17 what they want, but I want to be sure that this
18 record reflects what we are willing to do.

19 SPECIAL MASTER CARNEY: I am not necessarily
20 sure that ■ agreeing one hundred percent with
21 your analysis. I think, even if the parties
22 stipulate, for me to be a binding arbiter would
23 still require a court order.

24 And the reason ■ saying that is, because
25 ■ looking at it from the point of view of

1 Judge Crow. If I were Judge Crow, the question
2 is: Would I want somebody making decisions for
3 me that go up on appeal with my name on them
4 where [REDACTED] no part of the decision at all? [REDACTED]
5 not necessarily sure that I would agree to
6 that.

7 MR. SCAROLA: There would be no appeal. If
8 it's binding arbitration, there is no appeal.

9 SPECIAL MASTER CARNEY: Well, ultimately,
10 once the case goes up to the appellate court,
11 let's assume just for the sake of argument that
12 I make a ruling and I goof in my ruling. The
13 question is: It eliminates from Judge Crow any
14 ability to correct it.

15 Ultimately, when it goes up on appeal he's
16 the one who's appealed, not me. That's why [REDACTED]
17 viewing where [REDACTED] in Judge Crow's position,
18 whether it's binding arbitration or Special
19 Master, I would like to sign-off on the order.

20 MR. KNIGHT: Judge Carney, I heard Mr.
21 Scarola the first time. I heard him the second
22 time. I heard him the third time. The abuse of
23 process here, we still haven't been able to get
24 a proper privilege log since August. We want
25 to move forward on that. We understand his

1 issues and where he wants to go. I don't think
2 arbitration is something we've even discussed,
3 so we will consider that.

4 Although, I think there is a bunch of
5 problems that will come with that relative to
6 appellate rights, et cetera, that would be
7 before Judge Crow because we can't appeal your
8 ruling to the 4th. We can appeal Judge Crow's.

9 I don't want to get into that. I actually
10 want to get into the merits of what this hearing
11 is supposed to be today and not this smokescreen
12 that's being pushed on us, because there are
13 significant deficiencies in this TIG privilege
14 log that we need to discuss. They're very
15 important. It can put us in a position where at
16 this point we'll need to start reviewing the
17 documents.

18 MR. SCAROLA: Let's get at it.

19 MR. KNIGHT: So we need to get into it.

20 SPECIAL MASTER CARNEY: Just before we go.
21 Ultimately - and I do understand the defense
22 position because this has been on the table in
23 the past, apparently, agreed to by the
24 plaintiff - the position is in the absence of
25 following through on the agreement, it's

1 ultimately waiting to see what the ruling is
2 here. And if you like the ruling, you agree to
3 it. And if you don't like the ruling, you don't
4 agree to it.

5 As I say, there is some merits to the
6 position that probably aught be resolved before
7 the court makes a particular ruling, but I can't
8 compel resolution one way or the other. What I
9 am advising is, without a resolution of getting
10 in front of Judge Crow, all we're doing at this
11 point is spinning our wheels.

12 As I say, it's a State Court action and
13 Judge Crow has already said, ■ not bound by
14 whatever the bankruptcy judge does. In the
15 absence of an agreement, this cannot be placed
16 in front of Judge Crow as a fait accompli.

17 So, I see really compelling reasons, legal
18 reasons to go at least part way with what Mr.
19 Scarola is saying. I see only upside and no
20 downside. To do it without it, I see only
21 downside and no upside.

22 At any rate, having said that, let's
23 proceed. Let's start I guess with the privilege
24 log.

25 MR. ACKERMAN: Your Honor, I would like to

1 just add a couple of things before we proceed.
2 First of all, this matter has been brought up
3 without being properly noticed.

4 Judge Crow has entered a case management
5 order, which this is one of the items we have to
6 discuss. It's not as simple as Mr. Scarola puts
7 it, because there are issues as we've argued
8 before that Judge Rey has jurisdiction over,
9 including the order that we're here for now.
10 That has to be addressed now because of the
11 outstanding nature of the orders relating to the
12 privilege log.

13 We have other subpoenas that are going to go
14 to the Trustee. The Trustee is under the
15 jurisdiction of a Bankruptcy Court. Mr.
16 Scarola, with all due respect, is inaccurate in
17 relating what I said because, initially, when
18 these matters came before Judge Rey there were
19 other parties seeking records on adversary
20 proceedings.

21 But notwithstanding that, Judge Rey had
22 entered an order stating that based on the fact
23 that he had jurisdiction over the property of
24 R.R.A.'s records that he has jurisdiction over
25 that.

1 At this point in time we're asking the
2 court to rule on these two matters, asking the
3 court to enter a recommendation and at that
4 point in time the matter goes to Judge Rey. And
5 I believe that's the time to address these
6 issues, but it can't be done with a simple
7 stipulation because there are other issues that
8 have to be addressed for future subpoenas and
9 whether or not you're going to be appointed on
10 anything beside that. That's something that we
11 haven't discussed or resolved, and I say that
12 with all due respect to Your Honor.

13 But right now, your appointment is for these
14 documents and this subpoena. I believe that
15 in order to accomplish what Mr. Scarola is
16 saying or accomplish, rather, what Judge Crow is
17 saying for a review, ultimately, on the issues
18 that have to come before him, those issues have
19 to be taken into consideration.

20 They can't be done today. They haven't been
21 able to be done before because we haven't
22 addressed them. I think the appropriate time
23 is to do it as part of the case management and
24 not today.

25 MR. SCAROLA: ■■■ really not sure what Mr.

1 Ackerman just said, but if what he has said is
2 he doesn't want to proceed today, he wants to
3 wait and let Judge Crow do this --

4 MR. ACKERMAN: No, that's not what [REDACTED]
5 saying. [REDACTED] talking about your suggestion --

6 MR. SCAROLA: This matter has not been
7 properly noticed. What is the matter --

8 MR. KNIGHT: He's talking about what you
9 just brought up.

10 MR. SCAROLA: What is the matter that has
11 not been properly noticed?

12 MR. ACKERMAN: What you started this
13 conversation with today, that's what [REDACTED] talking
14 about. Your request for a stipulation, that's
15 not before us today.

16 MR. SCAROLA: Well, I don't know what
17 procedure must be followed to offer to enter
18 into a stipulation. [REDACTED] not aware that I've got
19 to file some written document or give some
20 period of time, notice in advance of raising
21 that issue. I have offered this stipulation
22 repeatedly. It has repeatedly been accepted
23 informally and then rejected. No confirmation
24 has ever been made.

25 I understand that it's been rejected today.

1 That's fine. I want it to be clear on the
2 record that that continues to be our position.
3 It will always continue to be our position. I
4 always expect that we will get nothing but delay
5 from the other side. That's okay, too.

6 So, if the matter that has not been properly
7 noticed is our offer of a stipulation, I don't
8 know what that means, let's get on with
9 whatever Mr. Ackerman believes has been properly
10 noticed.

11 SPECIAL MASTER CARNEY: Let's go back to the
12 privilege log at this point and the complaints
13 with the privilege log. Let's see if we have an
14 issue with the privilege log. And if we do,
15 what it is and what needs to be done.

16 MR. ACKERMAN: Your Honor, we filed an
17 extensive memorandum that summarizes, first, the
18 requirements of a privilege log and where,
19 specifically, the privilege log is deficient.
20 While we're on the subject of delay, a proper,
21 legally sufficient privilege log was due on
22 January 31st. One was not presented. It
23 was, basically, a privilege log that listed
24 several thousand documents with one entry to
25 apply to all of them.

1 We were before Your Honor again on February
2 16th. Mr. Edwards, Mr. Farmer and [REDACTED] were
3 given the opportunity to prepare a second
4 privilege log that would comply with the TIG
5 requirements. We received that second privilege
6 log, and that's the one we're here before Your
7 Honor.

8 The case law is abundantly clear that in
9 order for a party that seeks documents claimed
10 to be privileged, they must receive a log that
11 is complete, adequate and defines the
12 relationship of the parties so that they can
13 determine whether a valid privilege has been
14 asserted.

15 In this case throughout the entire log there
16 is no identification of the parties or their
17 capacities, so we cannot determine whether or
18 not they're a part of Mr. Edwards' law firm or
19 whether they're outside it. And I believe the
20 court had even at one point thrown a suggestion
21 out there to prepare some sort of master list
22 to identify that.

23 And while we may not have stated that
24 that would have complied with the cases, the
25 fact is, they have done nothing after being

1 given two opportunities to prepare a privilege
2 log.

3 Under the cases that we've cited,
4 particularly, the TIG case and the Century case,
5 the court is entitled if it finds it
6 appropriate, which we're asking it to do, to
7 determine a waiver.

8 What I would like to do is go through the
9 specifics of it. The privilege must
10 provide sufficient information to enable the
11 parties to evaluate the applicability of the
12 claimed privilege.

13 With regard to the attorney-client
14 privilege, we listed the elements that have to
15 be shown. We have to be able to see who the
16 holder is. There is absolutely no
17 identification as to which client they are
18 claiming the privilege for.

19 We have to determine whether the person to
20 whom the communi --

21 SPECIAL MASTER CARNEY: Don't we only have a
22 single client in this case?

23 MR. ACKERMAN: No. They have made the claim
24 of privilege on behalf of three, three potential
25 victims.

1 SPECIAL MASTER CARNEY: Okay.

2 MR. ACKERMAN: And now there are two
3 additional claims that they're making that I
4 suspect they're going to claim at least a
5 work-product privilege on.

6 So, we cannot identify whether the privilege
7 has been appropriately invoked, because they
8 haven't identified 1 of 5 possible clients
9 that could be the holder of the privilege.

10 There has to be an identification if that
11 person to whom the communication is made is a
12 member of the Bar or their subordinate. We
13 cannot tell that from the privilege log. We
14 have to know that it was, in fact, in connection
15 with the rendering of legal services, it wasn't
16 done in the presence of other outside strangers.

17 As far as this privilege log is concerned,
18 as it relates to the attorney-client privilege,
19 since we do not have any capacities described in
20 terms of the client, we do not know what the
21 specific purpose -- They can state the general
22 purpose without describing it and revealing any
23 confidentiality. We cannot know what their role
24 is in relationship to the confidentiality in
25 order for them to establish an attorney-client

1 privilege.

2 With regard to the work-product privilege,
3 that privilege is divided into two parts. It's
4 a fact work-product privilege, which relates to
5 information obtained during and in anticipation
6 of litigation.

7 And then there is the privilege that relates
8 to the attorney's mental thoughts and
9 impressions. Under almost all circumstances,
10 the thoughts and impressions of a lawyer are
11 completely privileged as work-product.

12 Under certain circumstances, upon the
13 demonstration of need and upon the demonstration
14 of inability to obtain facts from other sources,
15 fact work-product can be obtained from the party
16 requesting the information.

17 In this instance there is no effort
18 whatsoever to determine or to state whether the
19 privilege claimed to be work-product is fact or
20 work-product. ■ sorry. Fact, work-product or
21 opinion work-product.

22 Now, I've given the court the cases in
23 there. The case law requires particularized
24 findings in support of your determination as to
25 whether or not they are fact or opinion

1 work-product. You're not going to be able to do
2 that nor are we going to be able to make a
3 claim unless that distinction is made.

4 We also, respectfully, direct your attention
5 to the sheer number of people identified who
6 received e-mails from Edwards where no objection
7 is made on the basis of joint defense but only
8 work-product. They haven't established that
9 those people are within the litigation team or
10 the people that are entitled to receive the
11 work-product.

12 Because if he sends information out to third
13 parties that aren't part of his team, we're able
14 to argue that that's a waiver of the
15 work-product privilege without knowing their
16 capacity, without knowing the fact that they're
17 part of the litigation team. There is at least
18 over 20 of those where he's failed to establish
19 who they are.

20 In the pooled joint defense or common
21 litigation interests there are predicates for
22 establishing that. There may be attorneys on
23 there where he's claimed joint defense
24 privilege, although there is no claim of
25 defense against the plaintiffs that's being

1 made, but there's a predicate that needs to be
2 established as to who the person is, what the
3 purpose of the joint litigation or common
4 interest was to be, and that case is requiring
5 matters cited and there is no effort at all to
6 break those up.

7 In general, because the document is
8 discussed among participants or transferred
9 among participants in a joint common interest
10 agreement, it doesn't make it work-product if
11 it's not privileged to begin with.

12 For example, there are communications
13 relating to conversations with U.S. Attorneys
14 and FBI Agents which under no circumstances
15 have any privity with the joint defense. So
16 passing it on, particularly coming from them to
17 these agents, certainly is not a work-product
18 privilege.

19 There has to be an establishment,
20 particularly in the instance where they have
21 identified U.S. Attorneys and FBI Agents, as to
22 how that is any type of privilege, because the
23 government does not participate in nor can they
24 as a party in a civil proceeding absent a notice
25 of being filed and particularly in these cases.

1 They have listed confidential informants.
2 Now, the case law that we've cited allows the
3 government to withhold a confidential
4 informant's identity at least for a certain
5 period of time. But if that confidential
6 informant has material evidence relevant to the
7 defense of the case then a defendant can get it.

8 There are no cases at all establishing a
9 confidential informant privilege in the civil
10 arena. There is no comparable purpose to be
11 served and there is no legal basis for claiming
12 that type of privilege.

13 Here, the defendants don't claim an
14 informant privilege, which is the one that
15 exists in the criminal area, but they claim the
16 privilege of a confidential source. There is no
17 case law at all that indicates that that is a
18 legal privilege under Florida law, under the
19 Florida Evidence Code that deals with privilege.

20 And just because someone is named a source
21 doesn't make communications from that person to
22 the lawyer privileged or any documents that are
23 transmitted in that fashion.

24 So unless this confidential source is
25 identified to be a lawyer or an investigator

1 that's part of Mr. Edwards' litigation team then
2 those are facial waivers of the work-product or
3 any other privilege that's claimed, because they
4 are clearly third parties. And the lack of
5 identification of those people clearly makes
6 those impossible for us to tell. And if they
7 are claiming them to be, for example, in the
8 case of the FBI Agents or the U.S. Attorney,
9 those are clearly third parties.

10 There is also a claim for privilege based on
11 protective privacy rights. They haven't
12 identified any specific privacy right or
13 described the person whose privacy interests are
14 at stake. They haven't identified any of the
15 people that are claiming the privilege in other
16 aspects as well. But here, there can be no
17 valid privilege raised to protect a generic
18 privacy right.

19 Under Section 90.501 of the Florida
20 Statutes it lists the privileges that apply.
21 Absent the establishment of those privileges,
22 any document that is requested should be
23 produced.

24 I just want to add one thing that was
25 brought up earlier. Mr. Scarola has argued that

1 there has been no determination on the relevancy
2 of this subpoena. I submit to you, in prior
3 memorandums this issue has already been
4 addressed and you mentioned it at the last
5 hearing.

6 When this subpoena went out to the U.S.
7 Trustee in April, Mr. Scarola asked for copies.
8 There was no objection made at that time at the
9 time the subpoena was sent out. So, it's our
10 position the issues of relevancy are not
11 properly before you on this proceeding.

12 But with regard to the privacy, there is no
13 reason -- there is no case law that extends the
14 right of privacy to the issues that are set
15 forth here. They haven't claimed why it's
16 private. They haven't claimed who's stating
17 it's private. And we contend that those are
18 facial waivers to the extent documents rely only
19 on the privacy right.

20 Now, we've argued and I've given the court a
21 lengthy list of cases that it settled that the
22 failure to supply an adequate privilege log
23 results in a waiver of the privilege under
24 Florida or Federal law. There is a specific
25 case that I cited, Century Business Credit Corp.

1 It's in the brief and I have a copy of it.

2 In that case the 4th District allowed a
3 waiver to be found because the log was not only
4 months late, but also completely inadequate.
5 The citation for that in my brief and for the
6 record is: Century Business Credit
7 Corporation vs. Fitness Innovations and
8 Technology, 906 So.2d, 1156, Florida 4th DCA,
9 2005.

10 As I've indicated to you before, Mr.
11 Edwards, Farmer & Jaffe and [REDACTED] have had the
12 opportunity for the last, you know, from the
13 time the initial orders and documents were
14 provided, and certainly by January 31st, to
15 prepare an adequate log.

16 We are now six weeks beyond that and still
17 do not have a log that allows us to identify
18 meaningful objections with sufficient detail to
19 comply with the requirements of Florida Rules of
20 Civil Procedure 1.280, as well as the TIG case
21 and the Century Business case so that we can
22 make appropriate objections on this.

23 As a result of this we're asking the court
24 that, because no less than four orders directing
25 Edwards, et al. to prepare this privilege log

1 have been complied with and since the last two
2 do not remotely meet the TIG requirements, we're
3 asking the court to enter a finding that the
4 privileges have been waived.

5 Your Honor, on Page 83, if you need to see
6 the log.

7 MR. KNIGHT: These are just some examples.

8 MR. ACKERMAN: To give you an example, if
9 you look at Page 83, it says Brad to source. It
10 doesn't say who the source is. It's claimed
11 within the work-product privilege. We need to
12 have the identity to know if there is a waiver.

13 If you go to Page 85, you have Brad to
14 R.R.A.. We don't know who the attorney is,
15 whether it's Rothstein, whether it's someone in
16 the firm based on the investment team that was
17 attempting to arrange these investments through
18 third parties.

19 There's a similar problem on Page 86 for
20 Rothstein on e-mail regarding causes of action.
21 We believe that that would be work-product only
22 if it relates to a pre-existing client.

23 On Page 87 and 138, we have Jenne to
24 attorneys in Rothstein's firm. If Rothstein --
25 We don't know who that's going to. We've

1 established in deposition that Mr. Jenne brought
2 boxes of the [REDACTED] file to at least two
3 individuals who were interested in investing in
4 Mr. Rothstein's ponzi scheme.

5 If Mr. Jenne is sending the e-mail to
6 Rothstein, without knowing what the subject
7 matter is, it could be related to the scheme or
8 it could be to Mr. Edwards relating to the case
9 or the scheme.

10 Page 100, there's a listing for Coffey. If
11 he's not an attorney for R.R.A. and he's not in
12 the firm, then there may be a waiver of the
13 privilege.

14 We have Page 136 where there's an e-mail or
15 a letter from Brad to R.R.A. relating to
16 Clinton. We don't know which client that is.
17 We believe that part of the scheme to entrap
18 investors to this ponzi scheme was to subpoena
19 people like Bill Clinton and Donald Trump. And
20 there is testimony from Dean Kretschmar that
21 talks about a log book of people that were on
22 Mr. Epstein's plane, including Mr. Clinton.

23 Page 118, there's a reference to Carl
24 Linder. He appears to be involved in the
25 transactions involving the scheme with these

1 outside investors, but we don't know who he is,
2 and he appears to be receiving e-mails from Brad
3 Edwards relating to this case.

4 Page 155 shows the FBI as a source. That's
5 not work-product. And if there is information
6 coming from Brad Edwards to the FBI then that's
7 a waiver of the work-product privilege.

8 Those are some of the examples upon which
9 we're relying. But the court can see by an
10 examination of the log in its entirety there is
11 absolutely no identifying of capacities as to
12 who the people are, there is no identifying as
13 to who the client is for whom the work-product
14 privilege, attorney-client privilege, privacy
15 privilege, et cetera, has been claimed.

16 SPECIAL MASTER CARNEY: Response.

17 MR. SCAROLA: Thank you, very much. There
18 are multiple fundamental defects in the
19 arguments that have been advanced on behalf of
20 Mr. Ackerman's child-molester client.

21 MRS. SANCHEZ: Really?

22 SPECIAL MASTER CARNEY: Let's start at this
23 point by eliminating the characterization of
24 clients.

25 MR. SCAROLA: Well, that's a matter of

1 established record. He's pled guilty to
2 molestation.

3 SPECIAL MASTER CARNEY: That may be, but it
4 doesn't serve any purpose here.

5 MR. SCAROLA: There is no privilege log
6 required until discoverability is first
7 determined. Gosman, the 4th DCA case that Your
8 Honor has cited repeatedly in communications to
9 the parties, expressly holds that a predicate to
10 any requirement for the submission of a
11 privilege log is a determination of
12 discoverability.

13 What Mr. Epstein's lawyers have argued is
14 that a subpoena was issued to which no objection
15 was raised at the time of the issuance of the
16 subpoena. Under the unique circumstances of
17 this case, it must be remembered that Mr.
18 Edwards had no access to those documents. The
19 documents were within the possession and control
20 of the Trustee.

21 Mr. Edwards didn't know what the documents
22 were, didn't know what the contents of the
23 documents were and had every right to wait until
24 the time of the deposition and examine documents
25 on a document-by-document basis and raise his

1 objection to discoverability when the documents
2 were in front of him. He had no ability to
3 assert objections in advance of having access to
4 the documents.

5 Once he obtained access to the documents,
6 clearly, he has persistently and consistently
7 objected to the scope of the discovery sought.
8 He has argued that much of the discovery sought
9 is impermissible, beyond the scope of
10 appropriate discovery for many reasons before we
11 ever get to privilege issues.

12 It is our position that while we have
13 complied with the Bankruptcy Court's direction
14 to prepare a privilege log, the direction to
15 prepare a privilege log is at odds with state
16 law as expressly set out in the Gosman case by
17 the 4th District Court of Appeals.

18 SPECIAL MASTER CARNEY: Let me pause here
19 for a second, because I have a couple of
20 questions. I think an argument can be made that
21 Mr. Edwards had several choices: He could make
22 an objection that it's overbroad, in which case
23 I would agree with you. If there was an
24 objection overbroad, that stops everything until
25 that objection is ruled on. Or, he can make a

1 request for a protective order claiming
2 attorney-client privilege, a separate request.

3 The law actually is gray with the protective
4 order. There is a series of cases that say
5 they, too, also have to be resolved prior to
6 proceeding forward. But there's some case law
7 that also indicates as long as only privilege is
8 raised then it may require the necessity of the
9 privilege log. And that's the issue that [REDACTED]
10 looking at right now, because [REDACTED] not aware
11 that Mr. Edwards made an overbroad objection.

12 It's my understanding that - because I
13 would agree totally, that stops it - it's a
14 privilege log objection. As I say, a privilege
15 log is gray. Excuse me, a protective order is
16 gray.

17 Under the Evidence Code, and I've examined
18 that very carefully, the cases go in both
19 directions. They're all over the place on that.
20 But as long as the only thing that is being
21 raised, if it is not an overbreadth objection,
22 as long as it is only being raised that it's
23 attorney-client work-product then [REDACTED] not sure
24 there is a good way to resolve it without a
25 privilege log.

1 MR. SCAROLA: The point that [REDACTED] attempting
2 to make here is that the cases that address this
3 issue address it in circumstances where the
4 objecting party has possession, custody or
5 control of the documents. He knows what the
6 documents are. He can look at them and he can
7 decide which of them are subject to relevancy
8 and materiality objections, which of them impose
9 an undue burden, which of them may be
10 privileged, and he can focus his objections
11 based upon a knowledge of the documents
12 themselves.

13 SPECIAL MASTER CARNEY: And [REDACTED] not in
14 disagreement with that. But if we track a
15 little of the history of this, the way this came
16 about, originally, Judge Rey entered an order.
17 At least in my view the order was just patently
18 defective on its face. The order had directed
19 me to produce a privilege log. There were a
20 variety of issues with the order.

21 I had made a request to Judge Rey that we
22 need to clarify that order and we need to modify
23 that order. We've got problems with it. Judge
24 Rey agreed. A second order was entered. Under
25 the terms of the second order, which is

1 relatively in line with what we're doing right
2 now because there was still a third order, but
3 at this point documents were produced to the
4 defense.

5 Now, we ended up with another problem. The
6 documents that the Trustee gave to the defense
7 were not the same documents that the Trustee
8 necessarily gave to the Special Master. Some of
9 the documents that were given to the defense
10 were corrupted and not able to be read. That
11 caused still another delay, actually, not
12 occasioned by the defendant at that point, that
13 was occasioned actually by the Trustee.

14 It was redone. We did a new document based
15 on entirely what the Special Master got. So
16 that was what we were all traveling under. I
17 gave them my copy, they made their copy. But at
18 this point at least, I believe we were in
19 October, the defendant had the documents.

20 And so what ■■■ viewing, if I accept that he
21 may not be able to make a good objection until
22 he has the documents and sees what the documents
23 are, then, ■■■ not necessarily sure I disagree
24 with you on that.

25 Nevertheless, there was not an objection

1 raised on overbreadth. The overbreadth
2 objection under the case law normally stops the
3 privilege log, but a protective order based
4 exclusively on attorney-client privilege may
5 not. That, again, case law goes both ways on
6 that issue.

7 MR. SCAROLA: I understand that concern.
8 But what has consistently been overlooked is
9 the fact that this entire proceeding in the
10 Bankruptcy Court was an attempted end around
11 objections that had already been filed.

12 The first effort to obtain these documents
13 was a production request directed to Mr. Edwards
14 in the State Court proceeding to which we filed
15 relevancy objections, overbreadth objections and
16 a variety of other objections.

17 SPECIAL MASTER CARNEY: ■ not sure I can
18 bootstrap that onto this. I think each request
19 ultimately requires its objection. As I say,
20 ■ somewhat of the view at this point this one
21 is gray, because there was not a direct
22 overbreadth objection that was filed on this.
23 I think certainly at some point that objection
24 has to be raised or waived.

25 Under the rules it would have been raised

1 within 10 days or 30 days, I've forgotten
2 exactly which, from the issuance of the subpoena
3 or from the notice of the subpoena. But again,
4 accepting that he doesn't have the documents and
5 doesn't know what's in the documents at this
6 point, what they are, again, [REDACTED] not sure [REDACTED]
7 quite as troubled by that.

8 But as I say, we still get to the question:
9 How does he object to it? Because the objection
10 was only a privilege objection. I think there
11 is a pretty fair argument that could be made at
12 that point that it waives the overbreadth
13 objection and what we're left with is a
14 privilege objection, which would require a
15 privilege log.

16 MR. SCAROLA: I have multiple responses for
17 that. The first is that, Gosman tells us how we
18 deal with circumstances where we're in gray
19 areas. And what Gosman explicitly holds is
20 that an implied waiver of privilege is not
21 favored in Florida law. There must be an
22 expressed waiver. There, clearly, has been
23 no expressed waiver under these circumstances.

24 But let's move on from procedure to
25 substance, if we could. This is not a

1 circumstance where an adverse party seeking
2 discovery makes the determination of the
3 appropriateness of a privilege objection. That
4 determination is to be made initially by you and
5 subsequently by whichever judge or judges have
6 to make that determination.

7 The issue has got to be: Have you been
8 provided with sufficient information in order to
9 make those determinations?

10 T-I-G addresses the situation where a
11 privilege log is provided in lieu of the
12 production of documents. The situation we have
13 here is one where we have turned over the
14 documents themselves for in-camera inspection.
15 They're available to you. You can look at them.
16 We have told you to turn over anything and
17 everything that you think is relevant, material,
18 not privileged by attorney-client privilege, not
19 work-product. Give it to them.

20 You don't need a privilege log where the
21 document is described, because you have the
22 document. You don't need a privilege log that
23 tells you who the author of the document was,
24 because you have the document and it identifies
25 who the author was. You don't need a privilege

1 log that tells you to whom the documents were
2 directed, because the documents tell you to whom
3 they were directed.

4 Every inadequacy that they have described in
5 the privilege log is overcome by the fact that
6 we have voluntarily made the documents
7 themselves available and are prepared to answer
8 whatever questions you may have relating to
9 those documents during the course of an
10 in-camera inspection, if you determine that
11 that's what needs to be done.

12 SPECIAL MASTER CARNEY: [REDACTED] not -- Let me
13 pause here for a second, because I'm not sure
14 you and I are on the same page on this.

15 What [REDACTED] understanding is, the procedure
16 that seems to be set out as the appropriate
17 procedure on a privilege log issue is: Once the
18 privilege log has been filed, there is a
19 hearing. It's not an in-camera inspection at
20 that point. It is a hearing where the other
21 side challenges, if they will, the privilege.
22 What their position is is, they can't challenge
23 it without more information.

24 For example, the memo to confidential
25 source. They can't challenge that without the

1 information as to whether there would be a
2 privilege or whether that's something that falls
3 outside of the privilege, because it's a
4 disclosure.

5 MR. SCAROLA: We are on the same page,
6 because I agree with you that the standard
7 procedure is: First, the preliminary
8 determination as to whether the documents are
9 discoverable, if not, privileged. Then the
10 filing of a privilege log as to discoverable
11 material that is claimed to be privileged.

12 That log identifies documents with
13 sufficient particularities so that the parties
14 seeking the discovery can challenge the
15 assertion of privilege and then an in-camera
16 inspection to make a determination after the
17 challenge is raised as to whether the challenge
18 is or is not valid.

19 What I am suggesting to you is, we have
20 voluntarily skipped ahead and provided
21 everything for an in-camera inspection which we
22 would ordinarily not be obliged to do. And
23 because we have waived our right to have the
24 defense establish a prima facie showing for an
25 in-camera inspection, the inadequacies that they

1 are arguing exists in the privilege log become
2 absolutely irrelevant.

3 The documents are there for a determination
4 as to whether any of them are privileged. And
5 if there is any questions that arise with the
6 documents in front of you as to whether they are
7 or are not privileged or otherwise discoverable,
8 we're prepared to respond to those questions.

9 We have met our obligation by voluntarily
10 producing the documents for in-camera inspection
11 without putting the parties seeking discovery to
12 the burden of establishing some prima facie
13 basis for the in-camera inspection.

14 That's the whole purpose of the privilege
15 log, so that they have a basis to challenge the
16 assertion of privilege and to require that
17 certain documents be inspected in-camera. We've
18 waived it. We've given you everything. I don't
19 know that there is anything more, certainly,
20 that we are obliged to do.

21 SPECIAL MASTER CARNEY: Just so we're clear.
22 Actually, in terms of the Bates Stamp documents,
23 I still don't have the Bates Stamp documents.
24 I've never had the Bates Stamp documents.

25 MR. SCAROLA: They are available. They are

1 available. We've offered them before, we'll
2 offer them to you again. Review them. Whatever
3 you think is discoverable, give it to them.
4 That's the bottom line.

5 All of their objections, their T-I-G
6 objections are based upon a procedure that
7 simply does not apply under these
8 circumstances.

9 SPECIAL MASTER CARNEY: Just one moment.
10 Let me be sure ■■■ understanding exactly what
11 you're saying here. ■■■ going to use, as an
12 example, the confidential source.

13 What you're saying is that, out of the
14 15,000 statements that are listed here, there
15 are various objections that are raised to
16 various entries. Addressing specifically the
17 confidential source entry, that at this point
18 the next step would be an in-camera inspection
19 for the court to determine whether the
20 confidential source actually meets a privilege
21 or not a privilege.

22 What ■■■ understanding the reason for an
23 in-camera inspection would be, so that there
24 wouldn't be a release of the name of the
25 confidential source until such time as the court

1 makes that determination.

2 MR. SCAROLA: The legal argument has been
3 made that there is no privilege in civil
4 litigation to protect the identity of
5 confidential sources. ■ going to get to that
6 argument. They have cited the cases that
7 support the fact that confidential source
8 information is work-product information. It's
9 the work-product privilege that applies. There
10 is no confidential source privilege. There is a
11 work-product privilege that covers the identity
12 of persons who are providing information that is
13 not subsequently going to be used at trial.

14 If I may, ■ going to address that
15 issue and I would be happy to --

16 SPECIAL MASTER CARNEY: Okay.

17 MR. SCAROLA: Yes, you have the document.
18 You know what the document says. You can make a
19 determination as to whether it is covered by the
20 work-product privilege or it is not covered by
21 the work-product privilege based upon your
22 review of the document in your in-camera
23 inspection of the document.

24 SPECIAL MASTER CARNEY: Before we get to
25 that, let's cover a couple of areas right now

1 that are raised by the plaintiff. One,
2 plaintiff is indicating that there are three
3 potential sources who could assert the privilege
4 and there ought be some clarification in the
5 privilege log as to which of the sources is
6 asserting the privilege.

7 MR. SCAROLA: Why?

8 SPECIAL MASTER CARNEY: Well, that's a --

9 MR. SCAROLA: If it is a client of Brad
10 Edwards and a claimant against Mr. Epstein, why
11 must Brad Edwards identify to the defense which
12 client it is? Maybe it's a client who hasn't
13 yet filed a claim against Mr. Epstein. Why
14 should Mr. Epstein be entitled to know the
15 identity of that person who is asserting an
16 attorney-client privilege?

17 And this brings us to what I think is a very
18 important and fundamental point here: The
19 privilege belongs to the client; it does not
20 belong to Mr. Edwards, it does not belong to
21 R.R.A., it does not belong to the Trustee. Mr.
22 Edwards, R.R.A., Mr. Rothstein, the Trustee have
23 no ability to waive a privilege that does not
24 belong to them.

25 Every case that has been cited by opposing

1 counsel where there has been a waiver of
2 privilege found for failing to provide an
3 adequate privilege log or otherwise comply with
4 some discovery obligation, every case has been a
5 case in which the failure was attributable to
6 the client.

7 The discovery is sought from a litigant who
8 is the client. The client fails to meet the
9 client's obligation and a waiver is found as a
10 consequence of the client's failure to meet the
11 obligation to provide an appropriate log.

12 The privilege belongs to the client. The
13 client can waive the privilege. And failing to
14 comply with discovery obligations, some courts
15 have found in particular circumstances where it
16 has been particularly egregious, constituted a
17 waiver of the client's privilege.

18 Nothing Bradley Edwards does can waive the
19 client's privilege. It can't waive [REDACTED]'s
20 privilege. It can't waive the privilege of any
21 of the other victims who he represents or has
22 represented. That privilege belongs to them.
23 In order for there to be a waiver of the
24 privilege, they must be the ones who by their
25 actions or inactions or misconduct have waived

1 the privilege.

2 SPECIAL MASTER CARNEY: That may be a
3 argument for a little bit later down the road.
4 The issue that ■■■ trying to focus in on now is
5 a narrow one: Whether we have a problem with
6 the log or whether we don't have a problem with
7 the log.

8 MR. SCAROLA: Well, part of the argument
9 that has been made is, because there is a
10 problem with the log there has been a waiver of
11 privilege.

12 SPECIAL MASTER CARNEY: Well, that's what
13 they're suggesting as a sanction at this point.
14 But right now, ■■■ not dealing with that issue
15 at the moment. What ■■■ dealing with is: Do
16 we have a problem with the log at all or do we
17 not have a problem with the log?

18 MR. SCAROLA: Obviously, my primary argument
19 in that regard is: You have all of the
20 information that you need to make a
21 determination with regard to privilege. That's
22 the purpose of a privilege log, that's the
23 thrust of T-I-G; to give an independent finder
24 of fact and law the ability to be able to make
25 the determination ultimately.

1 The procedure that is outlined usually
2 involves a shifting of burden to the party
3 seeking discovery after the privilege has been
4 asserted to show some prima facie basis to
5 overcome the privilege or to challenge it, and
6 then an in-camera inspection. We've given it to
7 you. Conduct an in-camera inspection. Give
8 them whatever you think may be discoverable.

9 The other objection that they have raised is
10 that we have asserted in our privilege log a
11 right to privacy that they contend does not
12 exist. The point in their memo is, there is no
13 right of privacy that protects against any
14 discovery. They are absolutely wrong about
15 that.

16 This is the Florida Supreme Court, former
17 Justice Rosemary Barkett, speaking for the
18 court. The case is Rasmussen vs. South Florida
19 Blood Service. If you turn to Page 535 of the
20 opinion, I have highlighted the relevant
21 language. You can read it faster than I can
22 read it to you, so I won't bother reading it to
23 you. It's highlighted and copies were provided
24 to opposing counsel as well.

25 Florida law unquestionably recognizes a

1 right to privacy and requires that the trial
2 court balance the right of privacy against the
3 right to discovery. And to the extent that a
4 right of privacy has been asserted in this
5 case - again, you have the documents - you know
6 what their content are. You have an ability to
7 be able to waive the right of privacy that has
8 been asserted against the need for discovery in
9 this abuse of process case. And if you
10 determine that the right of privacy is
11 outweighed by the need for the discovery of any
12 of those documents, you have the ability to
13 order that they be turned over.

14 An additional argument that is made, that
15 there are documents as to which we have claimed
16 a joint defense privilege that are not covered
17 under the terms of a joint defense privilege.

18 As I believe opposing counsel recognizes
19 what is often referred to as the joint defense
20 privilege is really a common interest privilege.
21 The law recognizes the fact that persons with
22 common interests are entitled to share
23 information in a privileged and confidential way
24 regarding the advancement of that common
25 interest against a common adversary.

1 All of the requirements for the application
2 of the common interest privilege are met under
3 the circumstances of this case both with regard
4 to the common interests that were shared by
5 lawyers who were simultaneously prosecuting
6 identical claims against Mr. Epstein; there was
7 an express agreement among counsel that
8 information shared among them concerning Mr.
9 Epstein would be kept confidential; there were
10 regularly-scheduled conferences among counsel
11 for purposes of sharing that confidential
12 information; and the appropriate predicate
13 exists to guard that information against
14 discovery in matters that are still ongoing
15 against Mr. Epstein.

16 The same holds true with regard to the
17 common interests that were shared between
18 governmental prosecuting authorities and those
19 prosecuting civil claims arising out of
20 identical conduct by the same defendant in both
21 the civil and the criminal proceedings.

22 The common interest existed. The agreement
23 existed that information would be shared
24 confidentiality. Information was shared
25 confidentiality with a reasonable expectation of

1 privacy. The law cited by opposing counsel
2 recognizes the fact that that common interest is
3 sufficient to support an assertion of
4 privilege.

5 If you decide otherwise, you have the
6 authority to decide otherwise. You have the
7 documents. You can look at them. You can make
8 that determination.

9 Much of what is argued in this memo seeks to
10 add significant requirements to the elements
11 that are necessary in a T-I-G log, privilege
12 log. And even if those elements were to be
13 added, the in-camera production of the documents
14 satisfies those added elements, but they are not
15 appropriately imposed under T-I-G or any other
16 authority that has been cited by opposing
17 counsel.

18 I think that I have covered the points that
19 Mr. Ackerman made. If there is something that I
20 missed, I would be happy to address it.

21 MR. ACKERMAN: May I respond, Your Honor?

22 SPECIAL MASTER CARNEY: Yes.

23 MR. SCAROLA: One thing I might add. Also,
24 with regard to the common interest privilege,
25 one of the elements that is recognized in cases

1 that have been cited by the defense, excuse me,
2 by Mr. Epstein's lawyers is an agreement to
3 pool expenses. Such an agreement, in fact,
4 existed and we're prepared to support that by
5 testimony.

6 I think that completes my response.

7 MR. ACKERMAN: Your Honor, I briefly want to
8 address some of the things that Mr. Scarola
9 talked about. We have been through this even at
10 the last hearing. I have a copy of the
11 transcript, if you need it.

12 At the last hearing we had, we had the same
13 issue about overbreadth and whether it's
14 relevant, whether it's determined, and you
15 addressed it.

16 SPECIAL MASTER CARNEY: Let me cut straight
17 to the chase for a second. What [REDACTED] ultimately
18 understanding - and [REDACTED] paraphrasing and
19 translating some of the things that Mr. Scarola
20 is saying - not every single entry on the
21 privilege log has been objected to. What is
22 being pointed out is that there are certain
23 entries that are argued as being deficient.
24 Some examples of the entries are being argued.

25 From a practical point of view, it can make

1 it very difficult to craft an order and can
2 cause all kinds of delay in doing that. What is
3 being suggested is a cut-straight-to-the-chase
4 of having an in-camera inspection, both parties
5 present. And if there is a particular issue,
6 for example, confidential source, because I
7 would then have the document and I would know
8 who the confidential source is, I can ask
9 whatever questions are necessary to determine
10 whether a privilege exists or it does not. If
11 it doesn't, it's released. If the privilege
12 exists, we still have yet to cross the bridge.

13 But this is a threshold question, because a
14 lot of what ■■■ seeing that you're arguing, the
15 majority are situations where there is
16 disclosure and the privilege no longer exists.

17 Generally, it deals with disclosure to
18 third parties, but ■■■ not necessarily sure that
19 it wouldn't be a lot quicker and easier to do an
20 in-camera inspection and, if need be,
21 line-by-line say yes, no.

22 MRS. SANCHEZ: With both sides?

23 SPECIAL MASTER CARNEY: Both sides.

24 MR. ACKERMAN: May I address that one,
25 Your Honor?

1 SPECIAL MASTER CARNEY: As I say, the
2 alternative is, let's assume right now that I
3 take the position that the log is inadequate.
4 What the defense or what the plaintiff
5 seems to suggest - we'll use confidential
6 source for a second - is that the confidential
7 source be revealed. Well, at that point, the
8 cat's out of the bag. No way to take that one
9 back.

10 The question is: Can they argue
11 confidential source or must they in a privilege
12 log always reveal a confidential source? The
13 plaintiff seems to take the position that a
14 privilege log would require that you reveal a
15 confidential source, and I don't think the case
16 law really supports that.

17 And if it doesn't, then it seems to me that
18 there has to be an alternative method of doing
19 it where we have a Master who now has or will
20 have all the Bates Stamp documents.

21 It seems to me at least determining the X
22 or the O, privileged or not privileged, in terms
23 of the X or the O it may be a lot quicker and
24 easier to do the in-camera inspection on that.
25 Once we determine what's left, what's privileged

1 or work-product, then we go through the
2 procedure of the hearing at that point to
3 determine whether there's been some situation,
4 crime fraud or otherwise, that somehow
5 eliminates that particular privilege.

6 MR. ACKERMAN: Your Honor, I think Mr.
7 Scarola has glossed over an important
8 requirement in the rule. The rule doesn't --
9 His proposal neglects the portion of the rule
10 that says - and this is Rule 1.280(b) 5 of the
11 Florida Rules and there is a similar provision
12 in the Federal Rules - and the idea and what
13 these cases say, I mean, we're not trying to
14 craft additional work for them. We're asking
15 them to do what the law requires: The
16 information must be sufficient to enable the
17 parties to assess the applicability of the
18 privilege or protection.

19 The problem with Mr. Scarola's suggestion
20 is, we can't make any assessment because -- And
21 we did object to the entire entry in the initial
22 letter that I sent out, because there is no
23 identification - and these are requirements in
24 the cases - there is no identification as to who
25 the person is or what their capacity is. There

1 is no identification as to who is claiming the
2 privilege in which case it is.

3 I don't want to repeat what I said, but
4 we cannot make any arguments of waiver. You
5 will not know who is who when you do the
6 in-camera inspection.

7 SPECIAL MASTER CARNEY: Actually, I would
8 with both parties here. That's why I would want
9 both parties there to be able to say who is John
10 Doe.

11 MR. ACKERMAN: Your Honor, we can't
12 formulate, we can't make a meaningful assessment
13 as to whether the privilege claim is appropriate
14 or not without having the basic information
15 that's required by TIG. That is a requirement
16 in the rule. It is a requirement in the cases.
17 Because he, Mr. Scarola, believes you can do it
18 doesn't satisfy the rule where it says: In a
19 manner without revealing information itself
20 privileged or protected will enable other
21 parties to assess the applicability of the
22 privilege or the protection.

23 We don't know who these people are. We
24 don't know what capacity they've acted. Mr.
25 Scarola has come in and represented all the

1 predicates for the common interests have been
2 met. There's nothing in the log or that we've
3 seen that will establish that.

4 SPECIAL MASTER CARNEY: [REDACTED] not sure
5 that part of my concern is the plaintiff is
6 seeking more in the log than is necessarily
7 fully required. For example, on the -- You
8 know, whether it's fact work-product or opinion
9 work-product, [REDACTED] not sure that the log has to
10 distinguish this is fact work-product and this
11 is opinion work-product.

12 I think the log simply need to claim
13 work-product. It may have to identify whether
14 it's a -- if it's a photograph. In this case,
15 it's identifying a memorandum, but [REDACTED] not sure
16 it has to say that the memorandum is a fact
17 work-product memorandum or an opinion
18 work-product or it's both.

19 MR. ACKERMAN: But it's gotta say something
20 -- Excuse me, Your Honor.

21 SPECIAL MASTER CARNEY: It's gotta say
22 work-product.

23 MR. ACKERMAN: How are we going to know
24 what the document is if they just say
25 work-product? They don't describe it. They

1 don't say whether it's a statement. They don't
2 say whether it's a photograph. They don't say
3 whether it's a memorandum of law. And I submit
4 to you that that's what these cases require.

5 You're not going to be able to conduct
6 meaningful review. We're not going to be able
7 to make meaningful objections. And that's the
8 purpose of this rule, so that we can do that.

9 SPECIAL MASTER CARNEY: Well, the issue I
10 guess what [REDACTED] looking at, because [REDACTED] going to
11 have the documents, [REDACTED] not sure that I agree
12 that I cannot conduct a meaningful review.

13 There is a practical side that [REDACTED] looking
14 at I think both sides really ought consider.
15 We can go back and forth from pillar to post
16 trying to get what the plaintiff considers a
17 perfect privilege log. [REDACTED] not sure we'll ever
18 get that. We can spend the next six or eight
19 months doing that.

20 MR. ACKERMAN: What's wrong with them just
21 identifying who these people are?

22 SPECIAL MASTER CARNEY: We can have an
23 in-camera inspection and resolve it. It may
24 cost us a day or two, but we can have an
25 in-camera inspection and simply put the Xs or

1 Os.

2 Once we do that, we can proceed and move
3 pretty well. It seems to me, even if the log --
4 even if there are defects in the log, if one
5 looks from the practical side, both sides seem
6 to be taking the position at this point: Let's
7 move this along. The fastest way to move it
8 along would be an in-camera inspection. No
9 question that would be the absolute quickest
10 way. Because in the long run, we're going to
11 have to have an in-camera inspection of some
12 sort any way. Down the road, sooner or later,
13 that issue is going to raise.

14 As I say, we can wait three or four months
15 battling back and forth trying to get a perfect
16 privilege log or we can do the in-camera
17 inspection expeditiously and resolve those
18 issues right off the bat. It just seems to me
19 that from a practical side it may be a lot
20 quicker to do it that way.

21 MRS. SANCHEZ: Maybe ■ not understanding
22 the in-camera inspection, because to me it
23 almost seems as if now you're doing their job
24 which is fine.

25 SPECIAL MASTER CARNEY: Not at all. What

1 ■ doing is --

2 MRS. SANCHEZ: No, but --

3 SPECIAL MASTER CARNEY: As an example, just
4 to illustrate, go to Page 1.

5 MRS. SANCHEZ: Take the first document?

6 SPECIAL MASTER CARNEY: The first document.
7 The transcript of Alfredo Rodriguez deposition.
8 We can make a determination: Privileged, not
9 privileged. Work-product, not work-product. I
10 mean, I can give it an X or an O. We can
11 probably right this minute, right now, determine
12 whether that's privileged or not privileged
13 right off the bat. It's taken in front of a
14 court reporter. Does the court reporter waive
15 the privilege?

16 There are various things that we can end up
17 doing. Is presumably a properly noticed
18 deposition a privileged document? Again, I can
19 probably rule on that right now.

20 MRS. SANCHEZ: Depositions are usually
21 public proceedings so --

22 SPECIAL MASTER CARNEY: What ■ saying is,
23 a lot of this, things are being raised here. No
24 matter how many orders are -- how many interim
25 things I tell the defendant, we're still going

1 to have to sit down and have that decision.

2 It's an X or an O.

3 What I don't necessarily want to do at an
4 in-camera inspection is do an in-camera
5 inspection where I don't give anybody any
6 opportunity to say anything.

7 And so, if I take the position off the bat,
8 Gee, if this is done in front of a court
9 reporter at a deposition, a regularly-scheduled
10 deposition in a civil case, is this privileged
11 at all? And why in the world would I find that
12 to be privileged? They can give me their
13 reasons why they think it's privileged or not,
14 but I can put an X or put an O at the end of
15 that, ultimately, in the absence of an
16 agreement, since right now they're saying we
17 don't want to give any of this stuff.

18 MRS. SANCHEZ: Right.

19 SPECIAL MASTER CARNEY: As unpleasant as
20 it's going to be, in the long run what we're
21 going to need to do is at least sit down and
22 make the threshold determination: Yes,
23 facially, it's privileged. Or, no, it's not.
24 As I go through many of these things, many of
25 these things at least on their face to me don't

1 appear to be privileged at all.

2 MRS. SANCHEZ: This in-camera inspection,
3 would there be a court reporter so that we could
4 object later?

5 SPECIAL MASTER CARNEY: Yes. The way I like
6 to do an in-camera inspection just so that both
7 sides are aware: In-camera means that ■ not
8 showing it to you. So, we know that. You're
9 not going to get to see it. However, what the
10 in-camera does, I can generically identify
11 something and make a determination that it falls
12 within a category or it doesn't.

13 For example, using this deposition. I can
14 say the deposition is yes or no. I can give
15 them an opportunity to raise whatever they feel
16 is appropriate.

17 When we get to a confidential source, ■
18 going to know who the confidential source is,
19 because ■ going to have the paper directly in
20 front of me. You're not going to know the
21 confidential source initially. I'll try and
22 find from them at the hearing why this would
23 fall within some type of a privilege.

24 What ■ looking for is initially to take
25 the 17,000 or 15,000 entries and assign an X or

1 an 0 to the 15,000 entries.

2 MRS. SANCHEZ: Right. Basically, during
3 this in-camera hearing, essentially, what would
4 happen is that the information that we believe
5 is missing from the log to make that
6 determination, you would look at the document
7 and you would provide the information necessary
8 for us to make that argument?

9 SPECIAL MASTER CARNEY: When you say
10 "provide the information," [REDACTED] not --

11 MR. ACKERMAN: Here's an example, Your
12 Honor. If there is a letter from Brad Edwards
13 to John Jones, you look at it. How are we
14 going to be able to argue that's a waiver of
15 the privilege without knowing who John Jones
16 is?

17 MRS. SANCHEZ: Right.

18 SPECIAL MASTER CARNEY: That's an easy one.
19 Let's take Entry 2. It's from Brad Edwards to
20 Katherine Ezell. I have no clue who Katherine
21 Ezell is, but we know Katherine Ezell is
22 formally listed here.

23 I can ask Brad Edwards: Who is Katherine
24 Ezell? He can say this is a secretary in the
25 law firm. He can say it's an outside

1 accountant. I have no idea who Katherine Ezell
2 is.

3 MR. ACKERMAN: Can't we get that information
4 before you have an in-camera hearing, that's
5 what we're asking for, so that we can --

6 SPECIAL MASTER CARNEY: I don't actually
7 have a particular problem if we look to do an
8 in-camera hearing to try and trim the in-camera
9 hearing if we can trim it.

10 MR. KNIGHT: That certainly would make it
11 a lot more efficient if we would already --

12 SPECIAL MASTER CARNEY: Would be to go with
13 what I had originally suggested. If we get a
14 master list of who the players are so that when
15 you're listing people such as Katherine Ezell,
16 Jackie Johnson is another one who I think is a
17 paralegal or with the firm from reading before.

18 MR. EDWARDS: Right.

19 SPECIAL MASTER CARNEY: But when you're
20 listing Jackie Johnson --

21 MR. SCAROLA: We'll give you a score card.

22 SPECIAL MASTER CARNEY: -- and it's to Adam
23 Horowitz, as to who Adam Horowitz is. So that
24 at least we get a score card of who's who. What
25 ████ saying, if we do that we may be in a

1 position, maybe not, but we may be in a position
2 with a score card of paring down what we
3 actually have to do at an in-camera hearing.

4 MRS. SANCHEZ: The other thing that's
5 interesting on the privilege log, and I know we
6 went through this, is that a lot of these
7 e-mails and/or letters or whatever they are, I
8 think they're all e-mails, usually have ccs and
9 bccs which are important to us also. There's
10 not any of them that have that information. And
11 a cc or a bcc is very, very important, because
12 that in and of itself would be the waiver of the
13 privilege if it went to an outside source or
14 someone that's not within the privilege and
15 that's not here either.

16 SPECIAL MASTER CARNEY: But I am still
17 saying that to have the privilege log - because
18 ■ not sure that we're going to get a privilege
19 log that is going to satisfy the plaintiff and
20 I don't mean that disrespectfully at all - but I
21 think to get a privilege log when you're dealing
22 with e-mails where there are copies, the blind
23 copies, where you have e-mail strings, they go
24 on forever, the privilege log really becomes
25 relatively unwieldy. And the very unwieldiness

1 of the privilege log is going to always create
2 the objection that can be raised.

3 What [REDACTED] concerned with is we can end up
4 with privilege log objection, new privilege log
5 objection, new privilege log objection and go on
6 for months doing that, which is the way I see
7 this going.

8 Or, alternatively, we just take the bull by
9 the horns and sit down and do it. If we sit
10 down and do it, what I normally -- what I would
11 envision is having this and putting an X or an O
12 or a check on those things that are privileged,
13 those things that are not privileged.

14 At the end of the hearing the Bates Stamp
15 item, if [REDACTED] determining that it is privileged,
16 we have it subject to appellate review, subject
17 to court review if Judge Rey wants to look over
18 it, but it's subject to review. We have it set.
19 Once we determine where there are privileges
20 then we can cross the bridge if there are other
21 exceptions to the privilege as it would require
22 a further evidentiary hearing.

23 But [REDACTED] saying a lot of this stuff, probably
24 the majority of it, can be either eliminated as
25 it's not privileged and it is discoverable or

1 it's not. [REDACTED] not looking to raise at this
2 point or to rule on relevancy objections.

3 MRS. SANCHEZ: How long do you think it
4 would take for us to go through these 15 or --
5 How many documents are there in the privilege
6 log, Jack?

7 MR. EDWARDS: I think there's about 2,000
8 e-mails.

9 MRS. SANCHEZ: 2,000 e-mails?

10 SPECIAL MASTER CARNEY: 2,000? I would
11 think 2,000 e-mails, if we began in the
12 morning, probably a day. We could probably get
13 through it.

14 MR. ACKERMAN: Your Honor, when we --

15 SPECIAL MASTER CARNEY: But it would
16 probably take a day.

17 MRS. SANCHEZ: I would think it would take
18 a little longer than that.

19 SPECIAL MASTER CARNEY: It might take a
20 couple of days to do it, but it depends on how
21 much argument we're going to end up having.

22 MRS. SANCHEZ: Correct.

23 SPECIAL MASTER CARNEY: And [REDACTED] not
24 envisioning -- There are certain things that I
25 know Jack has talked about evidentiary this or

1 you all have talked about evidentiary that. [REDACTED]
2 not looking at the initial culling down as doing
3 evidence.

4 What [REDACTED] looking at is, basically, a
5 quick determination, for example: Is a
6 deposition in its entirety, is a deposition
7 work-product? And it seems to me [REDACTED] get an
8 answer to that one. A lot of these, that's
9 ultimately what [REDACTED] seeing.

10 As I have gone through the privilege log,
11 that's what most of them are. There are going
12 to be some that aren't, but most are. And the
13 ones that we actually get to that aren't, we set
14 those aside and that can be a separate
15 evidentiary hearing, but I just think we're
16 going to spin our wheels for a long, long time
17 trying to get a perfect TIG log out of this.

18 When you're dealing with this type of
19 evidence, when you're dealing with the e-mails,
20 with copies and blind copies, strings, I mean,
21 we're just never going to get a perfect
22 privilege log. And as I say, I think that the
23 plaintiff in one respect is expecting more than
24 the plaintiff is likely to get on a privilege
25 log to begin with.

1 MRS. SANCHEZ: Well, I think we're just
2 looking for something a little bit more
3 meaningful so that we can narrow what you need
4 to do. For instance, even if we just had the
5 names of the ccs or bccs and who these players
6 are and what connection they had.

7 SPECIAL MASTER CARNEY: How long would it
8 take to get names for the -- The players that
9 we have, anyone who's named in here -- Now,
10 we've got a lot of entries, for example, Jackie
11 Johnson is just mentioned hundreds of times.

12 MR. EDWARDS: That was my secretary, so I
13 would imagine.

14 SPECIAL MASTER CARNEY: Right. ■ not
15 necessarily sure that in terms of a list that
16 the list is going to be all that long. We may
17 have 2,000 documents, but we're not going to
18 have 2,000 names. We may have 50 names or
19 thereabouts, but we're just not going to have
20 that many names. A lot of them are repetitive.

21 What ■ saying, if we can get a master list
22 of who is who, so that we know that Jackie
23 Johnson is your secretary.

24 MR. EDWARDS: And I realize you may be at
25 somewhat more a disadvantage than they are. I

1 think that you're being somewhat misled in that
2 all of these people dealt with Epstein and his
3 attorneys for a two-year period of time. To say
4 I don't know who Kathy Ezell is when that is an
5 attorney that represented 21 underaged girls and
6 you dealt with on a daily basis for two years is
7 just not true. I didn't realize that I had to
8 tell them that this is somebody you dealt with
9 for two years every single day. You know who
10 these people are. You may not know and I think
11 so --

12 SPECIAL MASTER CARNEY: I think it will be,
13 if nothing else, it's helpful for me. But the
14 problem that ■■■ seeing right now - and again,
15 what ■■■ trying to do is craft something that
16 becomes workable - if we try and parse out
17 which ones they ought know and which ones maybe
18 they don't, we're going to spend forever doing
19 it. We're going to end up with more battles.

20 MR. SCAROLA: We will provide a roster. It
21 will cover at least all the principal players.
22 If somebody's name comes up that we have somehow
23 missed on a copy list, we'll tell you who that
24 person is during the course of the inspection.

25 SPECIAL MASTER CARNEY: We'll pick it up

1 during the inspection. How long would it take
2 to get a master list out?

3 MR. SCAROLA: A week.

4 MRS. SANCHEZ: A week?

5 MR. ACKERMAN: Your Honor, if we're going to
6 proceed down this path, we're not going to take
7 the position that TIG is waived because --

8 SPECIAL MASTER CARNEY: Of course not.

9 MR. ACKERMAN: -- we need to be able to have
10 a second opportunity. If you're going to set
11 aside stuff that you're putting an X on, then we
12 want to be able to have the opportunity at that
13 point in time to tell you the additional
14 information we're going to need to assert any
15 type of objection.

16 SPECIAL MASTER CARNEY: Absolutely. Here's
17 what ■ envisioning. Again, this is in
18 somewhat of a perfect world assuming that nobody
19 has a big objection or is filing objections on
20 this and the initial objections would probably
21 come out of the defense side. Let's say we have
22 100 entries and let's assume that I decide that
23 75 of those entries, there simply is not either
24 attorney-client or work-product. Then my view
25 is, you get the 75.

1 Now, of course, they can raise an objection
2 at that point if they decide that it's wrong,
3 because I can write out my findings that this is
4 what ■■■ finding, that these entries are not
5 work-product. But assuming we don't have a
6 problem with that, then you get the 75.

7 For the 25 that we find that there is
8 work-product, we still then go through the
9 procedure. At this point once I make a
10 determination that there is at least a threshold
11 showing right now that we have an
12 attorney-client privilege or we have a
13 work-product privilege, the burden then may
14 shift to you at that point to come up with, Why
15 not?

16 What we still do according to our original
17 plan is we make a determination at a subsequent
18 hearing: What are the ground rules we're all
19 following? What is the procedure now? What is
20 the standard as a preponderance of the evidence?
21 Is it clear and convincing? What is our
22 standards and what exactly -- who's got what
23 burden to establish what?

24 We lay out the ground rules so that we're
25 all clear on that and then we have a hearing on

1 that issue.

2 MR. ACKERMAN: But you're going to have an
3 additional step with that. In one sense you
4 think you may be saving time in one area, but
5 what's going to happen is, you're going to come
6 up with a stack of documents for which you think
7 there is a privilege and then we're going to
8 need to know which those documents are and we're
9 going to need to know or at least be able to
10 express what information we need in order to
11 proceed with our claim that it's privileged or
12 not.

13 So, for example, if there is additional
14 information - ■ going to pick the capacity
15 argument for the sake of it, for the sake of
16 illustrating my point - if they don't tell us
17 who the capacity is and you don't tell us, we
18 can't argue that there is a waiver because we
19 don't know whether the person that received this
20 document was, in fact, part of the litigation
21 team or is protected by some other legal
22 privilege.

23 We need to have an understanding,
24 respectfully, sir, that once the pile of the Xs
25 is determined we have an opportunity at that

1 point to say we need this additional information
2 if we're going to assert an exception or a
3 waiver.

4 SPECIAL MASTER CARNEY: I had cited a case,
5 and I don't recall off the top of my head the
6 case, but what my recollection of the case is:
7 The threshold burden in this case is upon the
8 defendant to establish that there is a
9 privilege. Whatever the privilege is, it's
10 their burden to establish that there is a
11 privilege.

12 There is a particular standard and the case
13 dealt with the standard that they had to meet to
14 be able to establish that, whether it was prima
15 facie or what their standard is. Once that's
16 established then we know exactly what the
17 privilege is and exactly what they're claiming.

18 If they are claiming that this is team
19 information, they're going to have to establish
20 the basis upon which they're claiming a
21 privilege; and that's their burden. Your
22 burden doesn't come until after that.

23 Once they establish that, then you have to
24 establish why there is an exception to it, that
25 there has been outside disclosure. Whether we

1 have, for example, a litigation team privilege,
2 whether that applies, they have to establish
3 litigation team. That's the point where you
4 would argue, no, it's not litigation team.
5 Either there is no such privilege as litigation
6 team or these people aren't on the litigation
7 team. They have to put on sufficient evidence
8 to establish the litigation team.

9 Once they establish it, if they can, then
10 the burden comes on you to come up with some
11 reason why then; because there's been disclosure
12 to a third party, because there's been some
13 other thing that would somehow obviate that
14 particular privilege. But the threshold
15 questions that you're talking about they have to
16 establish first.

17 MR. ACKERMAN: not sure I agree with
18 you. not sure -- My concern is to
19 address if they're not established at the time
20 that you finish your review.

21 SPECIAL MASTER CARNEY: No. What --

22 MR. ACKERMAN: Because they haven't
23 established it in terms of this log, in terms
24 of, for example, whether there's a waiver
25 because they haven't identified the people.

1 That's an example of what [REDACTED] talking about, and
2 there may be others.

3 SPECIAL MASTER CARNEY: Well, what [REDACTED]
4 looking at right now is, in terms of what I see,
5 the first in-camera inspection is more one of
6 exclusion than inclusion. What [REDACTED] saying is,
7 [REDACTED] taking out the stuff that is fairly
8 obviously not privileged. When we get to things
9 where there may be an evidentiary hearing,
10 whether it's privileged or not, what [REDACTED] looking
11 at are certain things that are not privileged.

12 Let's say, the deposition. There maybe an
13 argument the deposition simply is not
14 privileged. If it's not privileged, it's not
15 privileged. If there has been disclosure to
16 third parties and on the face of it I can see we
17 have disclosure to third parties and they're not
18 raising litigation team, they're not raising
19 whatever they're raising, then it's not
20 privileged.

21 Now, if they raised litigation team and so
22 we end up with that Katherine Ezell and they're
23 raising this is litigation team, what my view is
24 initially at that point at the first in-camera
25 inspection, I'll let that go. I'll let them

1 raise what they are raising.

2 At a second hearing once we narrow down,
3 because at this point now you're going to know
4 that Katherine Ezell, what they are raising
5 actually is the litigation team. And so you're
6 going to know that at the end of the first
7 hearing at least what they're raising.

8 When we actually get to a second hearing on
9 this, the second hearing, the threshold burden
10 is on them. Evidentiary hearing, they're going
11 to have to establish litigation team. If they
12 don't, it gets released. If they do, then the
13 burden switches over to you and you're going to
14 have to establish what exception you feel is an
15 appropriate exception.

16 But what [REDACTED] saying, by the end of our first
17 hearing we will have culled out everything
18 that is obviously not privileged and, ideally,
19 we would have at least narrowed down what the
20 privilege is.

21 If it's an exotic privilege such as
22 litigation team or this is a right of privacy,
23 whatever they're ultimately alleging as to why
24 that shouldn't be turned over, with each of
25 those documents we're going to go through and

1 make that determination.

2 MR. SCAROLA: I have a question.

3 SPECIAL MASTER CARNEY: Yeah.

4 MR. SCAROLA: Why must that be done in a
5 two-step process? If we've got the document in
6 front of us right now and if it identifies
7 Katherine Ezell, if the basis of our privilege
8 claim is that Katherine Ezell shared a common
9 interest with us and the information was being
10 shared confidentially pursuant to an agreement
11 to exchange information among persons who were
12 prosecuting claims against Mr. Epstein on behalf
13 of child victims of Mr. Epstein, why can't that
14 determination be made while we have that
15 document in front of us as opposed to putting it
16 aside and coming back to it at a later time to
17 argue that?

18 We know what the issues are. They've been
19 briefed by it by opposing counsel extensively in
20 the memo that's already been submitted. We
21 argue it. You decide it. That document is out
22 of the way. We don't have to come back to it.

23 SPECIAL MASTER CARNEY: My only quarrel with
24 that is, that suggests an evidentiary hearing.
25 And as we try to go through 2,000 documents,

1 that's going to take it a lot longer than a
2 couple of days as we go through that.

3 [REDACTED] more inclined to give them a relatively
4 clear - by "them," being the plaintiff - a
5 relatively clear idea of what particular
6 privilege is being asserted. If they want to
7 challenge and cross-examine Katherine Ezell,
8 they can challenge and cross-examine Katherine
9 Ezell.

10 But I think we'll need to take a look at
11 the case that I had cited at one point which
12 seems to be the relatively pole star case on how
13 to do these hearings. I can't recall whether
14 that needed a prima facie showing. Ultimately,
15 I think we're going to need to sit down and
16 figure out our ground rules on exactly how we're
17 doing it. Can you say it? Is that sufficient?
18 Do we have to bring in Katherine Ezell? Does
19 she have to testify? We're going to have to
20 lay out the ground rules, and [REDACTED] not
21 necessarily sure on the in-camera inspection
22 that it's going to be economical doing it that
23 way.

24 MR. SCAROLA: [REDACTED] not suggesting that the
25 right to an evidentiary hearing be eliminated,

1 but taking the specific example that we are
2 presently discussing, it is unimaginable that
3 they are going to contest the fact that
4 Katherine Ezell was representing child victims
5 of Mr. Epstein at the same time that Brad
6 Edwards was representing those child victims.

7 SPECIAL MASTER CARNEY: What I don't have a
8 problem with that we may be able to resolve at
9 this point: If we're dealing with only a legal
10 issue where both sides are in accord that the
11 facts are not particularly in dispute, and so if
12 we're dealing with an issue is there such a
13 thing as a litigation team privilege, either
14 there is or there isn't --

15 MR. SCAROLA: That's all [REDACTED] suggesting.

16 SPECIAL MASTER CARNEY: Then [REDACTED] saying if
17 it's a legal issue only, I can probably resolve
18 it at the in-camera inspection. If it's not a
19 legal issue only, if there is a mixed question
20 of fact and law, it requires an evidentiary
21 hearing and I wouldn't resolve it.

22 But what [REDACTED] trying not to do at the initial
23 in-camera inspection is get into evidentiary
24 issues, because that will dramatically lengthen
25 the in-camera inspection.

1 MR. SCAROLA: I understand and I agree.

2 MR. ACKERMAN: Your Honor, my concern is
3 that while there may be some documents, it's
4 hard for us to commit to what's going on without
5 knowing who people are. In the case of
6 Katherine Ezell, she may have sent this
7 litigation strategy memo to a third party thus
8 waiving it after you look at it.

9 SPECIAL MASTER CARNEY: That's fine.

10 MR. ACKERMAN: We need to have an
11 intermediate step here that allows us to look at
12 what you are tentatively upholding a privilege
13 on so that we can see if we have enough
14 information to make a challenge to the
15 privilege, if we feel it's appropriate, or not
16 and brief you on that before there is a final
17 ruling, as we had discussed at the last
18 procedure hearing we had, where we would have a
19 chance to brief you on the procedure and the
20 method for determining any claims of privilege
21 that you've preliminarily determined exists.

22 SPECIAL MASTER CARNEY: Let me see if we can
23 agree on the following. Today is Tuesday. By
24 say Tuesday of next week, get a master list,
25 which would be --

1 MRS. SANCHEZ: The 22nd.

2 MR. KNIGHT: The 22nd.

3 SPECIAL MASTER CARNEY: Have a master list
4 by the 22nd. I had indicated to everybody, I
5 think previously, [REDACTED] out of town starting
6 tomorrow and I will be out of town through the
7 25th. Beginning on Monday, the 28th, [REDACTED] back
8 in town.

9 Depending on your schedules, [REDACTED]
10 anticipating -- I would like to see with a nice
11 early start we get it done in a day. I don't
12 think a day is going to be unreasonable, because
13 I think a lot of this, it's not going to require
14 that much argument. It's a question of just
15 going through 2,000 entries and I think we can
16 go through 2,000 entries in a day.

17 MR. SCAROLA: There may be five legal
18 arguments that's going to be determinative of
19 every issue that's before the court.

20 SPECIAL MASTER CARNEY: If we do that, if
21 you all are available on the week of the 28th;
22 the sooner we do it, the better we do it.
23 Because at that point, what [REDACTED] envisioning is
24 we, hopefully, cull this down significantly.
25 Once we cull this down significantly we then

1 know what the issues are, what privileges are
2 being asserted and on what documents they're
3 being asserted.

4 What [REDACTED] like to do, because it will give us
5 an idea then of the approximate period of time
6 that we may need for the second hearing, [REDACTED]
7 actually seeing the second hearing is probably
8 going to be a lot shorter than the first.
9 Because what [REDACTED] ultimately saying is, it's
10 probably going to be the applicability of four
11 or five theories or the non-applicability as
12 opposed to going through on a
13 document-by-document on each one.

14 MR. KNIGHT: What specifically are you
15 requiring of a master list, because the TIG
16 objection in the beginning here is we need more
17 information to be able to make that hearing
18 efficient to move along?

19 MR. SCAROLA: We're going to give you an
20 alphabetical --

21 MR. KNIGHT: We need the ccs and the
22 bccs.

23 SPECIAL MASTER CARNEY: Right. You're going
24 to get a list of anyone that they've named, who
25 they are. So you'll get anyone that they've

1 named, you'll get who they are. You'll get
2 that done by Wednesday.

3 And then at the hearing, because what I will
4 have is, I will have the log but [REDACTED] also going
5 to have the Bates Stamped documents. And so
6 I'll sit there with that Bates Stamped document
7 and we'll go through document by document.

8 MRS. SANCHEZ: And at that point you'll read
9 the ccs and bccs to us?

10 SPECIAL MASTER CARNEY: Yes. Well, whether
11 I read the ccs and bcs to you, we'll take it
12 case by case. For example, if we have what
13 they're claiming is a confidential source, I may
14 not name the confidential source for you.
15 Otherwise, I may not have any problem doing it.

16 MR. KNIGHT: And we still would have our
17 arguments as to why a confidential source is not
18 going to be protected and, in fact, it's a
19 waiver?

20 SPECIAL MASTER CARNEY: Sure. Absolutely.
21 What [REDACTED] saying is, purely legal arguments, I
22 can handle purely legal arguments at the initial
23 hearing. What [REDACTED] saying is out of this log, at
24 the end of this hearing on the log, I can put
25 yes, no, yes, no, yes, no as to privilege,

1 non-privilege. For the nos, it's not
2 privileged, you get them.

3 For the yes that it's privileged, at that
4 point now you will know what the privilege is
5 that's being asserted, whether it's
6 attorney-client, work-product, whatever is
7 ultimately being asserted here.

8 I will try at the hearing to ensure that you
9 have as much information as you need on a
10 particular document. You can then make a
11 determination. We should be able to see how
12 many different issues we've got and be able to
13 iron out the time for our second hearing, how
14 long that second hearing is going to take and
15 how quickly we can do it.

16 MR. ACKERMAN: Your Honor, I would
17 respectfully request that as part of the
18 master list they add the ccs and the bccs,
19 because if we know who everybody is that's
20 getting these documents then this review will go
21 a lot faster. I think if they end up looking at
22 these given the kind of list they've got on the
23 log, it's going to end up being the same people.
24 I don't think it's going to be that onerous.

25 I would request that they do that, because

1 then we don't have a dispute at the time as to
2 whether so-and-so is so-and-so and what their
3 capacity is. You'll know and we'll know and
4 be able to address it at the hearing. It will
5 be a lot more efficient.

6 MR. SCAROLA: There are 2,000 e-mails. That
7 is an extraordinary burden.

8 SPECIAL MASTER CARNEY: ■■■ inclined to
9 agree. What I will do is this, and I think we
10 may not have any problem with this one: For any
11 particular e-mail where ■■■ determining that it
12 looks like, facially, we have a privilege where
13 we have non-confidential ccs and bcs, I will
14 tell you who they are.

15 MR. ACKERMAN: You'll tell us the names,
16 but we won't know who they are and their
17 capacity. That's what we're asking them to do
18 now.

19 SPECIAL MASTER CARNEY: What they're going
20 to give at some point, because ■■■ assuming that
21 this master list that they're going to give is
22 going to pretty much be covering everyone who is
23 on the cc and bcc list.

24 MR. ACKERMAN: I expect it will, but ■■■
25 asking you to specifically ask them to do that.

1 Because if you have all of the people on the bcc
2 list and the cc list, then you're going to be
3 able to look right then and there and see
4 whether they're a part of the law firm or not.

5 Otherwise, you're going to tell us who the
6 cc is and the bcc. And if they're not on the
7 list, we're going to need to know who that is
8 and how it impacts it. If we have those people
9 in advance, we could move this a lot faster.

10 SPECIAL MASTER CARNEY: [REDACTED] in hopes that
11 we are actually going to have those people in
12 advance. What [REDACTED] saying is, [REDACTED] not
13 necessarily looking that on Bates Stamp number
14 such-and-such that we get the cc and bcc list
15 for every single person on Bates Stamp 950.

16 If we have, nevertheless, for the 2,000 as
17 we have the players, who these are going to; cc,
18 bcc, whatever it is, who these are going to, so
19 that we know who they are. When I actually have
20 the document in front of me, if [REDACTED] looking at
21 Bates Stamp 950 and I say Bates Stamp 950
22 looks to me like it is a privileged document.
23 And you say, well, can you tell me who the cc is
24 or who the blindcopy goes to? I can tell you,
25 yes, it goes to John Smith and so forth. That's

1 who it goes to.

2 MR. ACKERMAN: [REDACTED] not asking them to do --

3 SPECIAL MASTER CARNEY: But you will have
4 the master list and you'll know that John Smith
5 is a paralegal for the firm.

6 MR. ACKERMAN: They don't have to do -- So
7 [REDACTED] clear on what [REDACTED] requesting. If they look
8 at a bcc and they see John Smith, they put his
9 name on the list. They don't have to put his
10 name next to each document if he's on that
11 document. You're going to see that.

12 SPECIAL MASTER CARNEY: Right.

13 MR. ACKERMAN: What we want is a list of the
14 capacities of everybody that is originating
15 documents, receiving them or getting copied.
16 Whether they're on there one time or two times,
17 I don't think we need to know how many documents
18 they're on or which ones. You're going to see
19 that. What I do think we need to know by the
20 time we do this is who is on them and what their
21 capacity is.

22 SPECIAL MASTER CARNEY: I don't have a
23 problem with that, because [REDACTED] traveling right
24 now initially under the assumption that in spite
25 of the number of documents that we have that the

1 list isn't that big. When I went through the
2 documents, at least a large portion of the
3 documents, the list isn't all that big. It's
4 the same people over and over and over
5 again.

6 And so to that extent, if we can get
7 that information, it doesn't have to be
8 attributable to each and every individual
9 e-mail, but at least a master list of who
10 everybody is where you're willing to actually
11 give a name.

12 For the ones that you aren't, we'll deal
13 with the confidential source as we get to it.
14 But what ■ saying then, if we can get a time,
15 ideally, if you all can check your calendars
16 now, if we can get a time and let's block off a
17 time

18 MRS. SANCHEZ: Just so I can understand: Do
19 none of these e-mails have attachments, Joe?

20 MR. ACKERMAN: They're not --

21 MR. SCAROLA: Some do.

22 MRS. SANCHEZ: But none of these, the log
23 doesn't seem to --

24 MR. ACKERMAN: The log doesn't designate
25 any attachments.

1 MRS. SANCHEZ: -- any attachments nor did
2 any of the documents we received, the irrelevant
3 ones and the ones that were for attorney's eyes
4 only, I didn't see any attachments. Were you
5 not printing out attachments?

6 MR. EDWARDS: Something was printed out for
7 me. I didn't printout anything. They were
8 delivered to my office and I used that. So then
9 I would turn it over. If it was irrelevant, I
10 didn't turn it over. If the attachment was in
11 there, it was in there. I didn't take out an
12 attachment that was attached or anything like
13 that.

14 MRS. SANCHEZ: Okay. I didn't see an
15 attachments, that's why --

16 MR. EDWARDS: Yeah, all that was printed was
17 the e-mail, all the e-mails. So if there was an
18 attachment to it, it may or may not have been
19 printed. Although, I think some attachments
20 were there because there were deposition
21 transcripts and things like that, and I think we
22 turned those over.

23 MRS. SANCHEZ: Well, like the first one, 76
24 to 89 does not seem like that would be a full
25 transcript of a deposition. But I could be, I

1 mean, maybe [REDACTED] wrong. Maybe it's a mini
2 version or something and we'll have it.

3 I mean, you know, if there was -- I would go
4 back to the disk and check the disk to make sure
5 that - I can't check it - to make sure that the
6 printing from the disk with the Bates Stamp
7 included all the attachments. I just noticed
8 now on the documents you gave us and in this
9 that I don't see attachments. I find that
10 strange.

11 MR. EDWARDS: Whatever there was was either
12 turned over or -- I didn't take out attachments.
13 I don't see how the production of a deposition
14 is going to prove that somebody was involved in
15 the ponzi scheme or not. [REDACTED] lost in this
16 process.

17 SPECIAL MASTER CARNEY: Let's see if we can
18 come up with a time that everyone is --

19 MR. KNIGHT: I was just trying to pull up my
20 calendar.

21 MRS. SANCHEZ: My only bad day is that
22 Monday.

23 MR. ACKERMAN: On the 28th. We have a
24 number of hearings on that case, too.

25 MR. SCAROLA: Brad is in trial the week of

1 the 28th. I am on Judge Streitfeld's calendar
2 in a tobacco trial that is backup on the 28th.
3 If that does not go forward and then I am going
4 to have some flexibility the week of April 5 it
5 looks like.

6 SPECIAL MASTER CARNEY: That's April 4.

7 MR. SCAROLA: April 4, yes.

8 MR. ACKERMAN: I think that would be a
9 better week for me.

10 MR. KNIGHT: The week of the 28th, [REDACTED] in
11 Texas. Towards the end of the week, [REDACTED] in a
12 big hearing on the 28th.

13 SPECIAL MASTER CARNEY: How about April 4th,
14 we can block off a day on that?

15 MR. ACKERMAN: I can do the 4th.

16 MR. SCAROLA: The 4th is not good for me. I
17 have a mediation set on the 4th.

18 MR. ACKERMAN: How about the 6th?

19 MR. SCAROLA: The 6th is good.

20 MR. EDWARDS: The 6th is good for me, too.

21 MR. KNIGHT: I'll work on it. I've got a
22 couple of things I have to work on.

23 SPECIAL MASTER CARNEY: Lilly?

24 MRS. SANCHEZ: [REDACTED] fine.

25 SPECIAL MASTER CARNEY: The 6th. The

1 location is here. You want to meet middle
2 ground?

3 MR. SCAROLA: This is fine.

4 SPECIAL MASTER CARNEY: My recommendation -
5 although ■ not the one driving in traffic at
6 this point when it's up here - the earlier we
7 get started, the more likely we are to finish
8 it. As early as you all are -- You all are
9 traveling. So, again --

10 MR. KNIGHT: Some people have kid drop-off
11 schedules.

12 SPECIAL MASTER CARNEY: Pick the time, but
13 as early as we can reasonably get started I
14 would just as soon --

15 MR. KNIGHT: We'll try to get back to you as
16 early as we can. I don't know which day.

17 MRS. SANCHEZ: Barring no traffic, I usually
18 can get here 9:15, 9:30, the latest.

19 SPECIAL MASTER CARNEY: You want to
20 tentatively set 9:15. And if you're not here,
21 we'll wait until you get here. Tentatively set
22 it for 9:15 and then plan on a reasonably quick
23 lunch.

24 MR. SCAROLA: I'll have lunch brought in.

25 SPECIAL MASTER CARNEY: Thank you. Do I

1 need to write something up for Judge Rey as to
2 what we're doing here?

3 MR. ACKERMAN: I think you ought to write
4 something up.

5 SPECIAL MASTER CARNEY: Like an interim --

6 MR. ACKERMAN: Interim report.

7 SPECIAL MASTER CARNEY: Interim report.

8 MR. KNIGHT: Good idea.

9 SPECIAL MASTER CARNEY: What [REDACTED] going to do
10 is, I'll go ahead and write out an interim
11 report and I'll e-mail it to you. And if you
12 can --

13 MR. ACKERMAN: Put it into a form file.

14 SPECIAL MASTER CARNEY: Polish it.

15 MR. ACKERMAN: I'll send it to Jack.

16 SPECIAL MASTER CARNEY: And then submit it
17 to the judge. It's not going to have I guess a
18 handwritten signature, but it will be -- I'll
19 put my name.

20 MR. ACKERMAN: Well, what we can do is, when
21 we get the form, I can send it to you. You can
22 sign it. We can do a Notice of Filing of
23 interim report. And then your signed one will
24 get filed.

25 SPECIAL MASTER CARNEY: What you can do, if

1 you want to catch me where I can be caught, the
2 French Quarter Inn in Charleston. I'll be
3 there Friday and Saturday.

4 MR. ACKERMAN: This Friday and Saturday.

5 SPECIAL MASTER CARNEY: Yeah, this Friday
6 and Saturday. And so, if you get it there on
7 Friday, what I can do is sign it and send it
8 back to you.

9 MRS. SANCHEZ: And you'll e-mail us whatever
10 it is?

11 SPECIAL MASTER CARNEY: I'll e-mail it
12 first so that you have it. The easiest way
13 that's going to be fairly quick, if you can Fed
14 Ex it up with a return package so I can get it
15 right back to you. But it's the French Quarter
16 Inn is the name of the place. That's
17 Charleston, South Carolina. And then I'll skip
18 it right back to you.

19 Then what I'll do is try and get a quick
20 interim report out this afternoon so that you
21 actually have one this afternoon so you can work
22 on it.

23 Anything else that needs to be addressed?

24 MR. SCAROLA: No, sir. Thank you.

25 MR. KNIGHT: Not at this time. Thank you

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for your time.

MR. ACKERMAN: No, Your Honor.

(THEREUPON, the meeting concluded at 12:15
p.m.)

REPORTER'S CERTIFICATE

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STATE OF FLORIDA)
)ss
COUNTY OF BROWARD)

I, Lee Lynott, Certified Shorthand Reporter and Registered Merit Reporter in and for the County of Broward, State of Florida, do hereby certify:

That said meeting was taken before me at the time and place set forth and was taken down by me in shorthand and thereafter reduced to computerized transcription under my direction and supervision, and I hereby certify the foregoing is a full, true and correct transcript of my shorthand notes so taken.

I further certify that I am neither counsel for nor related to any party to said action nor in anywise interested in the outcome thereof.

IN WITNESS WHEREOF, I have hereunto subscribed my name this 11th day of April 2011.

Lee Lynott, RMR, RPR
Notary Public, State of Florida
MY COMMISSION # DD996092
EXPIRES: June 29, 2014
Notary Public Underwriters

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