

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

Case No. 502009CA040800XXXXMB

JEFFREY EPSTEIN,

Plaintiff,

vs.

SCOTT ROTHSTEIN, individually,
BRADLEY EDWARDS, individually,

Defendants/Counter-Plaintiffs.

TRANSCRIPT OF PROCEEDINGS

VOLUME II

DATE TAKEN: Tuesday, October 3rd, 2017
TIME: 10:01 a.m. - 4:43 p.m.
PLACE 205 N. Dixie Highway, Room 10C
West Palm Beach, Florida
BEFORE: Donald Hafele, Presiding Judge

This cause came on to be heard at the time and place
aforesaid, when and where the following proceedings were
reported by:

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[REDACTED]

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1 THE COURT: Have we settled upon the
2 next motion we would like to have heard?

3 MS. HADDAD COLEMAN: Yes, Judge. We
4 will be proceeding -- Tonja Haddad Coleman
5 on behalf of Jeffrey Epstein. We will be
6 proceeding with our motion to overrule
7 objections and compel Defendant/
8 Counter-Plaintiff Bradley Edwards' answer to
9 questions.

10 Judge, this motion is directed at
11 Mr. Edwards' deposition testimony and the
12 two depositions he provided in this case,
13 the first of which was March 23rd, 2010, the
14 second of which was May 15th, 2013, which is
15 why this motion was not heard, as this Court
16 likely remembers from before lunch. In June
17 2013, summary judgment was granted, so the
18 issues of the answers to the deposition
19 questions became moot while the case was on
20 appeal.

21 Did the Court find the motion?

22 THE COURT: Well, I have two similarly
23 titled motions here in front of me. One
24 says, Epstein's Motion to Overrule
25 Objections and Compel Defendant/

1 Counter-Plaintiff Edwards to answer
2 questions.

3 MS. HADDAD COLEMAN: Yes, that's the
4 one.

5 THE COURT: Is that the one?

6 MS. HADDAD COLEMAN: Yes, Judge.

7 As this court is aware, the only thing
8 pending at this point in time in the case is
9 Mr. Edwards' claim of abuse of process
10 malicious prosecution against Mr. Epstein.
11 The abuse of process claim has been disposed
12 of. It was successfully won on the summary
13 judgment and is no longer an issue. So the
14 only operative portion of the Fourth Amended
15 Counterclaim is count two, malicious
16 prosecution.

17 In that complaint, Judge, against
18 Mr. Epstein, Mr. Edwards asserts in
19 paragraph 24, "While prosecuting legitimate
20 claims on behalf of his clients, Edwards has
21 not engaged in any unethical, illegal, or
22 improper conduct, nor has Edwards taken any
23 action inconsistent with the duty he has to
24 vigorously represent the interests of his
25 clients. Epstein has no reasonable basis to

1 believe otherwise, and never had any
2 reasonable basis to believe otherwise."

3 Then in paragraph 33, Edwards lists the
4 damages he suffered as a result of Epstein's
5 alleged wrongful conduct.

6 Judge, damages aren't an actual element
7 of the claim of malicious prosecution that
8 must be proven in this case. Injury to his
9 reputation, mental anguish, embarrassment
10 and anxiety, fear of physical injury to
11 himself and members of his family, the loss
12 of value of his time required to be diverted
13 from his professional responsibilities, the
14 cost of defending against Epstein's spurious
15 and baseless claims.

16 So as a result of those allegations,
17 Mr. Edwards was deposed. Within his
18 deposition -- nearly every section -- the
19 question was answered with an objection by
20 Mr. Scarola.

21 The first portion of our motion deals
22 with Mr. Scarola's very long and laborious
23 speaking objections. And that's an issue
24 the Court can read and perhaps rule upon
25 later, because we would like to just get to

1 the actual questions themselves.

2 THE COURT: What is Q Task? What's
3 that?

4 MS. HADDAD COLEMAN: That's where I'm
5 going, Judge. Page four, first question,
6 "What type of information did you the put in
7 Q Task?"

8 Q Task, as the Court may be aware or
9 may not --

10 THE COURT: I don't. That's why I'm
11 asking.

12 MS. HADDAD COLEMAN: It was created at
13 RRA. It was a form of instant messaging
14 within the office where the messages
15 received in the office can be deleted. I
16 believe it was created by Mr. Adler, a way
17 in which you can communicate about a case,
18 invite certain people to participate, and
19 then it can be deleted.

20 And based on information, again,
21 available at the time the suit was filed,
22 there was information about the Epstein
23 cases put in Q Task. So those questions
24 weren't answered.

25 And then the questioning continues

1 regarding how LM and EW came to bring a case
2 to Mr. Edwards for him to prosecute against
3 Mr. Epstein. And those questions -- a
4 privilege is asserted. They are not
5 relevant here. They are improper. And
6 furthermore more, Judge, if the Court looks
7 to the specific complaint filed by
8 Mr. Epstein against Mr. Edwards, the
9 allegation that we are stuck to defend here,
10 Rothstein and the litigation team knew or
11 should have known that the three filed cases
12 were weak and had minimal value for the
13 following reasons.

14 Judge, LM and EW were two of the three
15 cases that Mr. Edwards and the Rothstein's
16 firm were prosecuting against Mr. Epstein.

17 LM had testified that she never had any
18 type of sex with Mr. Epstein. She worked at
19 numerous strip clubs, is an admitted
20 prostitute, has a history of illegal drug
21 use, and has asserted her Fifth Amendment to
22 avoid answering questions in deposition
23 testimony.

24 EW testified that she worked at 11
25 different strip clubs, including one in

1 which RRA represented the strip club, The
2 Cheetah, and that EW also worked as a
3 showgirl. Then the same thing with Jane
4 Doe, seeking damages, claiming severe
5 emotional distress.

6 So these are the three cases that
7 Edwards was prosecuting against Mr. Epstein
8 while working at RRA. There's a causal link
9 alleged by Mr. Epstein in his complaint
10 against Mr. Edwards, which forms the basis
11 of Mr. Edwards' lawsuit. Mr. Edwards has
12 asserted that he always acted in good faith,
13 and everything he did while he was at RRA
14 was on the up and up.

15 So these questions go not only to what
16 Mr. Edwards did on behalf of his clients
17 while he was a partner at RRA, but also
18 directly to RRA's involvement in the case
19 and what Mr. Epstein alleged in his
20 complaint against Mr. Edwards that forms the
21 basis of Mr. Edwards' lawsuit.

22 So claiming attorney-client and
23 work-product privilege when asked about EW
24 and LM in Q Task and when information as put
25 in there are questions that should be

1 overturned.

2 Judge, the testimony given by LM and EW
3 before and after RRA became involved in this
4 case is definitely a central issue here.
5 There was testimony given to the FPI, we
6 believe, because we have privilege logs
7 and -- can't get the information yet, but
8 that's a subject of another motion -- their
9 testimony changed substantially once RRA
10 became involved in this case. That goes
11 right to crux of, again, what Epstein knew
12 at the time these suits were filed. The
13 suit was filed against Edwards, and what
14 Edwards was doing in this case.

15 Judge, if you turn the page, lawyers
16 for Mr. Epstein asked Mr. Edwards if in 2008
17 if he knew whether LM was listed -- I'm
18 sorry -- EW was listed as or deemed to be a
19 victim by the United States Attorney's
20 Office. He again refused to answer that.

21 One of the issues, again, that keeps
22 being raised is the issue of settlement of
23 these cases or ginning up these cases.

24 This is information that goes back to
25 the crux of that issue, and the responses

1 are necessary not only for Epstein to defend
2 this case, but more importantly for Edwards
3 to try to prosecute this case.

4 If he's alleging that everything he did
5 was legitimate and on the up and up, he
6 should have no problem answering the
7 questions related to what he did.

8 Judge, if you continue on to pages six
9 and seven, the question turns to
10 communications that Mr. Edwards had with the
11 press regarding interviews with his clients.

12 And again, he asserts privilege
13 communications. This is about communicating
14 with the press. There's no basis in law. I
15 will get to the legal arguments later, but I
16 am just going through the questions that
17 refused to be answered at this time.

18 Next it discusses the deposition of the
19 subpoena served on Ms. Maxwell. And
20 Mr. Edwards is asked, "Do you -- is
21 she neither -- would you agree that neither
22 Jane Doe nor LM" -- who are, again,
23 Mr. Edwards' two clients -- "have testified
24 that there have been any connection
25 whatsoever with Ms. Maxwell?"

1 Mr. Edwards answers, "Yes, I would
2 agree."

3 The question then continues to ask,
4 "You know why they are trying to serve a
5 subpoena on Ms. Maxwell to get testimony
6 that these girls that Mr. Edwards was
7 representing never made any allegations that
8 Ms. Maxwell had anything to do with the
9 case?"

10 THE COURT: Who is she?

11 MS. HADDAD COLEMAN: She's a very
12 wealthy female who was touted to the
13 investors as another reason why Mr. Epstein
14 would supposedly want to settle these cases
15 to keep her out of it.

16 Next question: "What occurred in the
17 cases that -- investigation of Mr. Epstein
18 while Mr. Edwards was employed by -- and a
19 partner at Rothstein, Rosenfeldt, Adler?"

20 Mr. Edwards is asked what investigators
21 worked on Mr. Epstein's cases. Not even
22 what work they did at this point, just who
23 worked on it. Refuse to answer.

24 "Who was the first investigator that
25 you believe was involved in investigating

1 the cases, just to name that topic?"

2 Mr. Scarola: "Work product, instruct
3 you not to answer."

4 It goes on. "Who" -- at the bottom of
5 page seven. "Who other than Mr. Fisten from
6 an investigator -- from an internal
7 investigator and RRA employee worked on
8 doing investigations on the Epstein files?"

9 Mr. Scarola: "Same objection. Same
10 instruction."

11 "You're claiming work product?"

12 "Yes."

13 And then the conversation continues,
14 then at the bottom -- at the bottom of page
15 seven, "Have you ever directed -- did you
16 ever direct investigators during the time
17 you were at RRA -- and that's the question
18 you are claiming privilege over, correct?"

19 Mr. Scarola: "I am claiming the
20 privilege with respect to any action that
21 was taken by Mr. Edwards or at Mr. Edwards'
22 direction in connection with the
23 investigation, prosecution of the claims
24 against Mr. Epstein."

25 It goes on. The question -- Judge, if

1 you read this yourself -- I don't think I
2 need to read it into the record page by
3 page. Same objection. Same instruction.
4 Mr. Edwards will not answer any questions
5 regarding what he did or didn't do.

6 This is in direct response to any
7 question related to an investigation of
8 Mr. Epstein solely while he was working as a
9 partner at RRA.

10 Judge, the next page, the subject
11 matter of the examination of deposition
12 turns to other investigations.

13 "Did Mr. Roberts ever perform
14 investigation work on any of the Epstein
15 files?"

16 "Same objection."

17 Judge, you can go through again, that
18 goes to -- Mr. Scarola objects to every
19 question asked.

20 Then the subject turns to Alfredo
21 Rodriguez. Mr. Epstein's attorney attempted
22 to ask on two separate dates about
23 Mr. Rodriguez in the deposition. And again,
24 the first question, Judge -- you can look at
25 he dates and see how germane these issues

1 are.

2 THE COURT: Who is Mr. Rodriguez?

3 MS. HADDAD COLEMAN: He is a man who is
4 alleged in Mr. Edwards' -- some of
5 Mr. Edwards' pleadings as -- I'm sorry,
6 Judge -- something to do with -- he was
7 Mr. Epstein's housekeeper.

8 I apologize, Judge. I came into this
9 case in 2012, so I don't know sometimes all
10 of the facts that came before me.

11 Between those two dates, that is July
12 29th and August 17th, 2009 -- and again, if
13 the Court remembers, the date of the Ponzi
14 scheme and the implosion --

15 Did you speak with Mr. Rodriguez at
16 all?

17 Refuses to answer.

18 All I am asking right now, not the
19 substance, but just so the record is clear,
20 did you the speak with him? And again,
21 Mr. Edwards won't answer.

22 The examination continues regarding
23 contact with Mr. Rodriguez. And then again
24 you can see all the privileges that were
25 responded to as a result of those questions.

1 Judge, next we're at page 11. The
2 subject matter turns to Mr. Edwards'
3 communications with Maria Villafaña, who is
4 the United States attorney -- assistant
5 United States attorney involved in the
6 Epstein cases.

7 Question: My question is only did you
8 speak to her prior to filing that complaint,
9 Doe versus United States. It's just a yes
10 or no.

11 Refuses to answer. Throughout the
12 entire questioning there he refuses to
13 answer.

14 Then it turns to Mr. Edwards'
15 conversations with FBI agents in connection
16 solely about the Epstein cases. And again,
17 he refuses to answer.

18 Page 12, Judge, is where we really get
19 into the heart of the matter. And the
20 subject matter of the examination turns to
21 Mr. Edwards' purported interactions with
22 anyone associated with the Epstein cases.

23 And before I get into these questions,
24 Judge, as the Court may recall and be aware,
25 in some of his pleadings, Mr. Edwards has

1 asserted that the RRA firm and Mr. Edwards'
2 actions were so zealous during this time
3 period -- as part of his defense -- because
4 there was a joint prosecution agreement in
5 the cases against Mr. Epstein and that RRA
6 was asked to take the lead, or that
7 Mr. Edwards was asked to take the lead
8 because he had three plaintiffs.

9 So these questions are very germane,
10 not only to Mr. Edwards' assertion of why he
11 did what he did, but more importantly to
12 what was actually occurring in these cases
13 during the time frame in which Mr. Epstein
14 formed his basis to file suit against
15 Mr. Edwards.

16 Question: "Mr. Edwards, among the
17 plaintiffs' lawyers, is there any type of
18 joint prosecution agreement related to
19 Mr. Epstein?"

20 "Same objection. Same instruction."

21 Judge, this goes on for two pages. You
22 can see it yourself. Mr. Edwards will not
23 answer any question. This wasn't even
24 asking for a copy of the agreement or what
25 it is. We were just asking what exists.

1 Next page. The discussion turns to the
2 manner in which the cases were handled while
3 Edwards was a partner at RRA, the meeting he
4 had with Mr. Rothstein.

5 We asked: "The meeting you had in
6 Mr. Rothstein's office with Russell Adler
7 and some unknown person on the phone, were
8 you given any direction at that time that
9 certain discovery should be done, certain
10 tactics should be used with regard to
11 prosecuting the Epstein cases?"

12 "Objection."

13 Question: "What did -- what
14 information did Mr. Rothstein send you that
15 involved Mr. Epstein?"

16 "Same objection. Same instruction."

17 Question: "At the meetings that you --
18 at the meetings that occurred where these
19 various lawyers, Berger, Adler, Stone, Rob
20 Bushel were present and Epstein was
21 discussed, was the discovery and/or
22 investigation regarding Mr. Epstein ever
23 discussed?"

24 "Objection."

25 Next line of questions. It turns to

1 the events surrounding the prosecution of
2 the Epstein cases in 2009.

3 Again, Judge the crux of the
4 investigation.

5 "In setting these depositions -- that
6 is, in requesting these depositions be taken
7 some time in June or July of 2009 or
8 requesting dates for them, did you have
9 discussions with other attorneys at your
10 firm as to the benefits that would exist in
11 your case -- your three cases against
12 Mr. Epstein by taking these individuals'
13 depositions?"

14 "Objection. Instruct you not to
15 answer."

16 Question: "Mr. Edwards, were you
17 involved in any discussions regarding the
18 depositions -- I'm sorry -- regarding the
19 deposing of any of the people -- of these
20 individuals -- Mr. Trump -- that is, in
21 discussions with any other lawyers in your
22 firm, including Scott Rothstein?"

23 "Same objection. Same instruction."

24 "Did you ever discuss with
25 Mr. Rothstein or anyone on his behalf the

1 value of taking the depositions of Trump,
2 Dershowitz, former President Clinton, David
3 Copperfield, Leslie Wexner as an inducement
4 to get Mr. Epstein to settle his lawsuits?"

5 Again, Mr. Scarola objects.

6 Judge, this all continues on the next
7 page. The questioning goes on about flight
8 data, planes own by Mr. Epstein. And again
9 same objection.

10 "Were you involved with -- in the
11 discussion to receive flight data associated
12 with any planes purportedly owned by
13 Mr. Epstein?"

14 "Objection. Instruct you not to
15 answer."

16 "Did you have any discussion within
17 your firm with regard to taking the
18 deposition of celebrities, famous people who
19 were reportedly on the plane so that they
20 would be deposed and it would be an
21 inducement to Mr. Epstein to settle his
22 lawsuit?"

23 "Same objection. Same instruction."

24 Question: "Isn't it true, Mr. Edwards,
25 in taking the deposition or in attempting to

1 take the deposition of Donald Trump, you had
2 no information that Mr. Trump had any
3 knowledge of any female having -- that is,
4 underage female ever having been on
5 Mr. Epstein's plane and having been
6 assaulted by him?"

7 And Mr. Scarola: "What Mr. Edwards
8 knew or didn't know in connection with this
9 prosecution of a pending claim is protected
10 by privilege. I instruct him not to
11 answer."

12 The conversation goes on, Judge, to
13 investigation of Officer -- I'm going to say
14 his name wrong. I apologize -- Vakeri
15 (phonetic) -- purpose of the conversation
16 with this officer. No answer, yet he's
17 listed on the witness list at this time.

18 Then the conversation turns to Ken
19 Jenne, former Sheriff who worked at RRA
20 during the time in question.

21 THE COURT: What page are you on?

22 MS. HADDAD COLEMAN: I'm at the top of
23 page 15.

24 Same objections.

25 Then, Judge, the second deposition,

1 which occurred immediately prior to this
2 court granting the summary judgment motion,
3 Mr. Edwards was asked additional questions.
4 In addition to the fact that if he were
5 asked all the questions asked the first time
6 would he object again. And he said he
7 would, he would assert the same objections.

8 So Mr. King is at this deposition
9 objecting on grounds of relevancy,
10 materiality, instructing the witness not to
11 answer.

12 And then if the Court turns to page 16,
13 there's actually a statement of government
14 privilege in response to a question: "Did
15 you ever have any contact with Kendall
16 Coffey regarding the propriety or asking him
17 an opinion on the propriety of taking that
18 book from Mr. Rodriguez?"

19 "Same objections. Work product and
20 attorney-client privilege and government
21 privilege."

22 Then again, Judge, if you go on page
23 16, the conversation turns to, "If we ask
24 you every question that was asked in the
25 first deposition would you assert the same

1 privileges?" And they said yes. Then it's
2 made clear that after the court rules on it
3 the deposition will be continued.

4 Then on the next page, Judge, Mr. King
5 presents that they did not produce any items
6 responsive to Schedule AB served with the
7 deposition duces tecum relating to any
8 damages suffered by Mr. Edwards as a result,
9 allegedly, of this lawsuit, which is, again,
10 an element of this case. He asserted
11 financial privacy privilege at the
12 deposition as to anything related to his
13 work, how much money he made, how much money
14 he made while at RRA, how much money he made
15 off the Epstein cases and things of that
16 nature.

17 So, Judge, those are the summaries of
18 topics in the depositions for which we are
19 seeking responses from Mr. Edwards.

20 As set forth in detail within the
21 motion and the case law presented, neither
22 the attorney-client privilege nor the
23 work-product privilege is applicable to
24 virtually anything we ask, and the
25 argumentative objections made by Counsel, as

1 well as other certain questionable
2 objections, have no basis in his assertions
3 and should be overruled.

4 THE COURT: Let me you. Do you know
5 whether or not the objections are being
6 asserted during the pendency of the claims
7 by the females that had sued Mr. Epstein and
8 that Mr. Edwards was representing at the
9 time since then having been resolved, to my
10 knowledge -- all of those cases?

11 MS. HADDAD COLEMAN: Judge -- I'm
12 sorry.

13 THE COURT: That's okay.

14 Or was a matter of objecting relative
15 to mental impressions when it comes to work
16 product? Because I really don't see an
17 attorney-client privilege in any of
18 questions asked as it relates to the present
19 case, that is, Edwards/Epstein matter. Does
20 it relate to attorney and work product
21 privilege as it relates to that case, the
22 current case that we have in front of us?

23 MS. HADDAD COLEMAN: Judge, Mr. Edwards
24 sued Mr. Epstein. And he asserted in no
25 uncertain terms in his complaint that every

1 action he took in these cases were
2 legitimate and for a legitimate purpose, and
3 he did not engage in any impropriety.

4 As a result, these questions, many of
5 which just required a yes or no answer, go
6 to the crux of the allegations he made. He
7 made the statement --

8 THE COURT: I understand. And my
9 question is not necessarily one of relevance
10 particularly for discovery purposes where we
11 know that the bounds of discovery are much
12 broader than what may be admissible. The
13 test is whether or not the information
14 sought is reasonably calculated to lead to
15 the discovery of admissible evidence.

16 What I'm trying to understand, though,
17 is one of privilege -- and whether you can
18 answer for me -- perhaps Mr. Scarola will be
19 able to do so -- the timing of these
20 depositions may or may not be close to when
21 these cases were still -- the minor female
22 cases or the adult female -- whomever it was
23 that sued -- sued Mr. Edwards (sic) were to
24 recover damages for alleged physical abuse.

25 So my question is whether or not these

1 privileges that were asserted --
2 particularly the work-product privilege
3 related to those cases that would have been
4 still pending at the time these depositions
5 were taken, meaning the ones that
6 Mr. Edwards was representing the females --
7 or was it in conjunction with the case that
8 is at issue here.

9 MS. HADDAD COLEMAN: Judge, the three
10 cases that Mr. Edwards was prosecuting
11 against Mr. Epstein, the civil cases, were
12 all settled by the time the second
13 deposition took place.

14 I believe they were settled shortly
15 after Mr. Edwards gave his first deposition.
16 But they were certainly settled before I
17 came into the case in 2012. So I can tell
18 you, in no uncertain terms, by the time
19 Mr. Edwards' second deposition was taken
20 they had long been settled, because that was
21 in 2013.

22 Judge, I would say not only were the
23 cases closed, but Mr. Edwards put his work
24 product at issue by filing this suit. So
25 certainly, if not when the cases were still

1 pending, but once the cases were settled he
2 needed to answer those questions and still
3 does.

4 With respect -- I guess to answer your
5 question regarding the work-product
6 doctrine -- and of course, obviously, this
7 information is needed, as the Court's aware
8 what the law says -- this information is
9 needed for Mr. Epstein to defend himself.
10 And indeed, more importantly, Mr. Edwards
11 will need to use it if he's going to
12 successfully attempt to prosecute this case
13 against Mr. Epstein and say what he alleges
14 in his complaint.

15 He has the burden of proof that
16 everything he did was on the up and up. You
17 can't assert a privilege for every action
18 you took in prosecuting a case and then come
19 back and not give us the information of what
20 you did to defend it.

21 Judge, the law states that if we show
22 that we the party seeking the discovery need
23 the material for preparation of our case,
24 and we are unable, without undue hardship,
25 to obtain the equivalent material another

1 way, that the court should grant us the
2 access to the information. That's in
3 Florida Rule of Civil Procedure 1.280(b)(4),
4 and in *Genovese versus Provident Life* 74
5 So.3d 1064 Florida Supreme Court 2011.

6 It's also established, Judge, under the
7 law, that a plaintiff cannot assert
8 work-product privilege to avoid answering
9 questions regarding his own allegations that
10 he alleges in a complaint, even if the
11 question reveals a legal theory of his case.

12 And the case that stands for that
13 proposition, Judge, is *Dunkin' Donuts versus*
14 *Mary's Donuts*, 206 F.R.D. 518 Southern
15 District of Florida 2002. And again, the
16 rationale supporting this was quoted by the
17 Florida Supreme Court in 1994 in the
18 *Southern Bell Telephone and Telegraph*
19 *Company versus Deason*.

20 Frankly, Judge, if the Court wants me
21 to go through the other objections that were
22 raised in deposition that have no basis in
23 law in a deposition, objections such as
24 assumes facts not in evidence; hypothetical
25 question; no proper predicate; not

1 reasonably calculated to lead to the
2 discovery of admissible evidence; the
3 financial part -- I'm sorry, government
4 privilege -- it's all laid out there. I
5 don't think it requires a long belaboring
6 legal argument from me.

7 Frankly Judge, the objection on the
8 grounds of financial privacy -- I'm on page
9 22 of my motion judge.

10 THE COURT: I am with you.

11 MS. HADDAD COLEMAN: We understand
12 perhaps better than the average defendant
13 that there is a financial right to privacy
14 and sometimes it can be waived.

15 Judge, it can be waived when the
16 material that's sort by a party is relevant
17 to the subject matter of the pending action.

18 Here, Judge, Mr. Edwards is claiming
19 damages against Mr. Epstein. Part of those
20 damages include injury to his reputation as
21 an attorney; loss of time diverted from his
22 practice, again, as an attorney. And how
23 does one quantify this? It's monetary.
24 It's financial.

25 If his reputation suffered somehow as a

1 result of being sued by Mr. Epstein in 2009
2 and not by being partners with Scott
3 Rothstein, we are entitled to pursue that.
4 We're entitled to the discovery to show how
5 much money he made while he was working at
6 RRA, before he was working at RRA, after he
7 worked at RRA, what his relationship was
8 with the alleged other plaintiffs with whom
9 he had a joint prosecution agreement that he
10 refuses to turn over, how the money was
11 split up once the cases were settled.

12 All of those issues, Judge, relate to
13 financial damages that he is alleging in
14 this case.

15 THE COURT: Joint prosecution agreement
16 means that one or more than one of these
17 alleged victims would be jointly prosecuting
18 Mr. Epstein? Is that what this is supposed
19 to be?

20 MS. HADDAD COLEMAN: Yes, Judge. In
21 some pleadings, Mr. Edwards has asserted, in
22 defense to our allegations of what went on
23 in the cases while he was a partner at RRA,
24 he alleged that basically RRA was taking the
25 helm, because they had the financial means

1 to conduct all this discovery. And it was
2 pursuant to a joint prosecution agreement --
3 or a co-plaintiff -- I might be using the
4 wrong words -- but it was asked in the
5 deposition. Mr. Edwards brought this up.
6 This wasn't something that Mr. Epstein just
7 thought was occurring.

8 Then when we pressed Mr. Edwards to
9 provide answers to that with whom, how did
10 it work out, did you have anything in
11 writing, Mr. Edwards refused to answer the
12 questions, as you saw in here, pursuant to
13 work-product privilege, attorney-client
14 privilege.

15 In this case, Judge, the damages he's
16 claiming allegedly could have started in
17 2009 and could be continuing to present
18 date, because this lawsuit is still going
19 on.

20 THE COURT: I understand.

21 MS. HADDAD COLEMAN: So it's our
22 position that because he's made his
23 finances -- or his financial damages -- it's
24 an element of this case. It's not just
25 run-of-the-mill let's let the jury decide it

1 thought he was damaged, he has to prove
2 damages. And we are entitled to explore
3 what damages he may have suffered so we can
4 determine the value of his case, if any, and
5 so we can properly defend against it.

6 THE COURT: Was any production in the
7 request made in that respect?

8 MS. HADDAD COLEMAN: Yes, Judge. Again
9 it was requested in his depo, and he
10 objected to everything. And we did serve
11 him after -- after the stay was lifted, I
12 served damages interrogatories to
13 Mr. Edwards, and we received unverified
14 responses in the middle of last week. So I
15 don't have a verified answer to those yet.

16 THE COURT: Do you have those with you
17 so I can take a look? We may be able to
18 bypass some of the discussion and get into
19 the sufficiency of those unverified answers.

20 MS. HADDAD COLEMAN: I do, Judge. If
21 you give me just a moment. It's in my file.

22 Judge, the instructions won't be here,
23 but the relevant time period was 2006 -- or
24 2008, I believe, right before Mr. Edwards
25 went to work at RRA when he was a sole

1 practitioner. And before that he was an
2 assistant state attorney.

3 May I approach?

4 THE COURT: Sure.

5 MS. HADDAD COLEMAN: This is
6 Mr. Scarola's filing notice of serving
7 unverified answers, as well as our questions
8 and his answers, the objections.

9 MR. SCAROLA: Your Honor, may I request
10 a copy of that? I didn't bring it with me,
11 as it is not raised as an issue in the
12 motion.

13 THE COURT: Obviously it was something
14 that I was interested in and perhaps it
15 wasn't raised but it could hopefully curtail
16 some of discussions here once I take a look
17 at them.

18 Deputy, would you ask Denise to kindly
19 make an extra copy, please?

20 MS. HADDAD COLEMAN: Judge, with
21 respect to the rest of the motion, we
22 just -- in the motion we -- again, the last
23 deposition was taken a month before you
24 granted the first summary judgment. And as
25 you know, from June 2013 -- I'm sorry from

1 -- the case had basically not been actively
2 prosecuted in this court until June 2017
3 when the Florida Supreme Court issued its
4 final ruling. So should the Court grant our
5 motion, we did preserve the right to
6 redepose Mr. Edwards on these issues.

7 We feel not only that all of the
8 actions taken by Mr. Edwards while
9 prosecuting the cases at RRA are issues that
10 need to be answered. Judge, Mr. Edwards'
11 reputation and -- commiserate with his
12 financial business what he was bringing in
13 as an attorney and through his law firm both
14 before and while at RRA, as well as after
15 leaving RRA, go straight to the heart of
16 what he's claiming, being injury to his
17 reputation and time away -- diverted away
18 from his cases.

19 We are hopeful that the Court will
20 review all of that information as well as
21 the case law relied upon in our motion, and
22 compel Mr. Edwards to answer the questions
23 that are related to this lawsuit.

24 THE COURT: As I said, I don't know if
25 you've had the opportunity to review the

1 answers that are unverified.

2 From a telephone conversation that
3 Mr. Goldberger, Mr. Scarola and Mr. Edwards
4 and I had regarding the logistics of trying
5 to deal with the stay or a motion and how we
6 were going to go forward, the manner in
7 which we can proceed -- Mr. Edwards was on
8 the telephone from Jamaica -- so it may have
9 been just a matter of his unavailability
10 that caused the unverified answers.

11 Have you had a chance to look at them?

12 MS. HADDAD COLEMAN: Judge, I was at a
13 funeral Friday and couldn't appear
14 telephonically. I did. He object -- if you
15 read the first 25, objection, irrelevant,
16 not likely to lead to admissible evidence,
17 overbroad, without any law or any assertion
18 other than that.

19 Then the last few say, different
20 answers, which is -- a few of them are
21 really related to the verification.

22 But basically there's no answers there,
23 other than the amounts -- he gives us the
24 amounts that the three cases Mr. Edwards was
25 prosecuting against Mr. Epstein were settled

1 for, which clearly we know because
2 Mr. Epstein paid the money. So there's no
3 substantive answer to any of them, would be
4 my answer to you at my first glean of them.

5 THE COURT: All right, we will take a
6 look at that.

7 All right, in the meantime while I'm
8 waiting to get those, Mr. Scarola, you want
9 to respond to these general areas of inquiry
10 and the position that you are taking as of
11 now, because I think that's really what
12 matters as opposed to then?

13 MR. SCAROLA: Yes, sir, I would like
14 to. Indeed, that is a very significant
15 distinction because --

16 THE COURT: Deputy, hand out the
17 copies.

18 MR. SCAROLA: At the time that both
19 depositions were taken, there were competing
20 claims that had not yet been resolved,
21 including Mr. Epstein's claim against
22 Mr. Edwards, in which Mr. Epstein bore the
23 burden of proving that Mr. Edwards lacked a
24 good faith basis for all of the claims that
25 he brought against Mr. Epstein and all of

1 the conduct that he had engaged in during
2 the course of those prosecutions.

3 Obviously, with regard to the conduct
4 that occurred during the course of the
5 prosecutions, that conduct was covered by
6 the litigation privilege, and therefore, all
7 inquiries into any post-filing activities on
8 Mr. Edwards' part was not relevant or
9 material and could not lead to the discovery
10 of relevant or material information.

11 And since it was relevant only to -- or
12 since the line of inquiry was being pursued
13 with regard to Mr. Epstein's claims against
14 Mr. Edwards, there was no sword/shield
15 concern in that regard.

16 We are now in a position where
17 Mr. Edwards' state of mind at the time he
18 filed his claims against Mr. Epstein has
19 been resolved by virtue of a motion for
20 summary judgment. That is, we moved for
21 summary judgment on the basis that
22 Mr. Edwards did nothing improper, had
23 probable cause to support all of these
24 claims. No opposition was filed to that
25 motion.

1 And on the eve of the summary judgment
2 hearing, a voluntary dismissal was taken.
3 So there has been a disposition favorable to
4 Mr. Edwards as a matter of law with regard
5 to those claims.

6 So what remains at issue presently is
7 not Mr. Edwards' state of mind, but
8 Mr. Epstein's state of mind. At the time
9 that Mr. Epstein filed his claims against
10 Mr. Edwards -- the five claims that we have
11 referenced earlier this morning on more than
12 one occasion -- the issue in that regard is
13 limited to what Mr. Epstein knew at the time
14 he initiated those prosecutions, and not
15 what he has somehow able to try to discover
16 to attempt to justify his unjustified and
17 unjustifiable actions at the time it was
18 taken.

19 That is, he cannot prove that he had
20 probable cause by reference to things he had
21 no knowledge of, and could not have had any
22 knowledge of at the time he filed those
23 claims. That would specifically include
24 knowledge of any communications that
25 Mr. Edwards had with his clients.

1 Obviously, Mr. Epstein did not know
2 about the content of attorney-client
3 privilege communications, and could not rely
4 upon the existence of the substance of those
5 communications to try to justify his lawsuit
6 against Mr. Edwards.

7 He also did not know about Mr. Edwards'
8 work product, Mr. Edwards' mental
9 impressions, Mr. Edwards' Q-Tip (sic)
10 communications --

11 THE COURT: Q Task.

12 MR. SCAROLA: Q Task. Thank you.

13 -- in the intra-office system that
14 existed during Brad Edwards' prosecution of
15 his claims against Mr. Epstein.

16 Incidentally, Brad Edwards began the
17 prosecution of those claims long before he
18 ever became a member of RRA. Those cases
19 were all filed, they were being actively
20 prosecuted and pursued when Mr. Edwards was
21 hired by the Rothstein, Rosenfeldt, Adler
22 firm.

23 But what went on in those cases after
24 Brad Edwards had filed them, was obviously
25 not something that Mr. Epstein could rely

1 upon. If he didn't already know it at the
2 time he filed suit, he could not rely upon
3 it as justifying his having filed suit, so
4 it could not possibly be part of probable
5 cause.

6 Now, one thing that is glaringly
7 omitted from the argument that Your Honor
8 has heard on these issues is how Brad
9 Edwards could possibly waive a privilege
10 that doesn't belong to him.

11 The attorney-client privilege is not
12 the lawyer's privilege. The attorney-client
13 privilege belongs to the client. The
14 clients are not parties to this action. The
15 clients have taken no action that could
16 waive attorney-client privilege. They have
17 not waived it and Brad Edwards is ethically
18 obliged to protect the confidentiality of
19 those communications, not only during the
20 period of time that he was actively
21 representing these clients, but the
22 attorney-client privilege survives and
23 continues past the termination of the
24 attorney-client relationship. Indeed, even
25 after a client has died the obligation to

1 protect the confidentiality of the
2 communication continues.

3 With regard to the work-product
4 privilege, that privilege is very clearly
5 defined in Florida Rule of Civil Procedure
6 1.280(b)(3). And, Your Honor, that is
7 quoted in the response in opposition to
8 Jeffrey Epstein's motion to overrule
9 objections and compel answers to these
10 questions. It is quoted in its entirety at
11 page two of our response. And it says that
12 a party may obtain discovery of documents
13 and tangible things otherwise discoverable
14 under subdivision (b)(1) of this rule. That
15 means it must be relevant and material and
16 prepared in anticipation of litigation or
17 for trial by or for another party, or by or
18 for that party's representative, including
19 that party's attorney, consultant, surety,
20 indemnitor, insurer or agent. And I will
21 pause there for just a moment.

22 The joint prosecution agreement was an
23 agreement among the plaintiffs' lawyers who
24 all had claims pending against Jeffrey
25 Epstein for the sexual molestation of their

1 minor female clients.

2 An agreement was entered into to share
3 confidential information for purposes of
4 serving the unified interest of those
5 claims. That's what the agreement was.
6 That's all the agreement was. There was no
7 fee sharing agreement. There was nothing
8 beyond the fact that information could be
9 shared, and the confidentiality of that
10 information preserved within the context of
11 the common interest that those plaintiffs
12 shared.

13 So I point that out only because it
14 relates to this reference to including that
15 party's attorney, consultant, surety,
16 indemnitor, insurer or agent only upon a
17 showing that the parties seeking discovery
18 have a need of the materials in the
19 preparation of the case -- that goes to this
20 stage whether they have any relevance
21 whatsoever, because we are no longer dealing
22 with Brad Edwards' state of mind, only with
23 Jeffrey Epstein's state of mind, and is
24 unable, without undue hardship, to obtain
25 the substantial equivalent of the materials

1 by other means. That means you must exhaust
2 alternative means of discovery to uncover
3 the facts before you attempt to invade the
4 work-product privilege.

5 In ordering discovery of the materials
6 when the required showing has been made, the
7 court shall protect against disclosure of
8 mental impressions, conclusions, opinions or
9 legal theories of an attorney or their
10 representative of a party concerning the
11 litigation.

12 Well, what is the stated purpose of
13 this? The only thing we have heard is, we
14 want to discover Brad Edwards' mental
15 impressions. We want to discover what he
16 was thinking when he was making choices that
17 he made during the course of the litigation
18 and what he was thinking when he brought
19 these claims. Well that's no longer an
20 issue before this court. We are not here to
21 decide what Brad Edwards was thinking. That
22 issue has been resolved by way of a
23 voluntary dismissal. What we are here to
24 determine is whether Jeffrey Epstein had any
25 reasonable basis whatsoever to support his

1 claims, or was he acting out of malice.

2 So the law clearly tell us the mental
3 impressions of lawyers are not discoverable.
4 Those are sacrosanct work product.

5 THE COURT: Let me stop you for a
6 moment and interrupt, as I have others, with
7 a question.

8 MR. SCAROLA: Surely, sir.

9 THE COURT: In terms of now, the issue
10 is one of Mr. Edwards' bringing an
11 affirmative claim against Mr. Epstein for
12 malicious prosecution. The elements have
13 been discussed with some detail earlier
14 today. Probable cause being one of those
15 that we focused on.

16 The mental impressions that Mr. Edwards
17 may have had -- and that would be
18 potentially protected as it relates to
19 claims of the clients that Mr. Edwards
20 represented against Epstein -- can be
21 compartmentalized as it relates to those
22 claims.

23 However, there is an affirmative claim
24 being made by Mr. Edwards against
25 Mr. Epstein for malicious prosecution

1 relating to at least several issues -- the
2 ones that we have discussed and perhaps
3 there's more -- is the federal case that was
4 brought that allegedly mirrored the state
5 case, and Mr. Epstein's apparent belief that
6 those claims were being brought to his
7 detriment, arguably -- because I think
8 there's still a question out there whether
9 or not Mr. Epstein actually sustained any
10 cognizable damage as a result of the claim
11 that he brought against Rothstein, Edwards
12 and LM. We will leave that for another day.

13 But there's still issues of the federal
14 case being brought that allegedly mirrored
15 the state claim, and in his view --
16 Mr. Epstein's view was somehow inflated to
17 appease the investors in this Ponzi scheme,
18 and thus potentially subject him to further
19 exposure as it related, not only
20 economically for damages, but also costs of
21 the defense, attorney fees and the like.

22 Then also this claim that somehow the
23 alleged factoring of these cases -- I guess
24 they admitted to the factoring of these
25 cases to the extent that shares were

1 apparently sold to investors, and the
2 attempt to inflate the amount of those cases
3 to the detriment, again, allegedly of
4 Mr. Epstein, that lengthy discussion as to
5 the current claim would be compartmentalized
6 and unassociated with the prior cases where
7 Mr. Edwards is representing the alleged
8 victims.

9 There has to be some method of
10 discovery here to properly vet probable
11 cause on behalf of Epstein as it relates to
12 his defending the affirmative action brought
13 by Edwards.

14 He cannot be completely and entirely
15 hamstrung from making at least some headway
16 into that aspect of the matter.

17 I agree with you from the standpoint of
18 asking questions why did EW or any of these
19 other females come to you for advice, it
20 would not be sacrosanct. It would not be
21 something that would be subject to
22 discovery. It would be clearly
23 attorney-client privilege, and that
24 privilege would remain consistent, even if
25 the case had been settled.

1 To me, I don't see any relevance from
2 the standpoint of would it be reasonably
3 calculated to lead to the discovery of
4 admissible evidence. But things such as the
5 investigation and how this investigation
6 proceeded when these cases were being
7 factored, when they were being sold to these
8 so-called investors, when the time period
9 was where the LM case was brought to federal
10 court, what transpired during that period of
11 time that may have given rise -- again,
12 getting back to the reasonable calculation
13 analysis for discovery of admissible
14 evidence, why would at least some of that
15 material not be subject to discovery,
16 perhaps not admissibility, but for discovery
17 purposes.

18 MR. SCAROLA: Everything that
19 Mr. Epstein knew about what was going on,
20 everything that Mr. Epstein reasonably
21 believed about what was going on is relevant
22 and material to whether Mr. Epstein had
23 probable cause to sue Brad Edwards for some
24 viable tort claim arising out of that
25 reasonable belief.

1 THE COURT: When he filed the suit.

2 MR. SCAROLA: When he filed the suit,
3 yes, sir.

4 So the point in time that we have got
5 to look at is the point in time at which the
6 lawsuit was filed, because that's when
7 probable cause is measured.

8 If we are talking about an arrest, the
9 viability and legality of the arrest is
10 judged based upon what the law enforcement
11 officers reasonably believed at the time
12 that the arrest was made.

13 If we're talking about the probable
14 cause for the filing of the lawsuit, we are
15 talking about what the plaintiff reasonably
16 believed at the time of the filing of the
17 lawsuit.

18 And as I candidly acknowledged earlier,
19 that might be a mistaken belief, just as law
20 enforcement officers may mistakenly believe
21 a suspect is the one who committed the
22 crime. But if the belief is reasonable,
23 probable cause exist.

24 If Mr. Epstein's belief at the time he
25 filed was reasonable, then probable cause

1 existed. But he cannot attempt to establish
2 probable cause on the basis of things that
3 he neither knew nor could possibly have
4 known, because in many circumstances, they
5 hadn't even occurred yet. A lot of this
6 inquiry --

7 THE COURT: That's fair. What hadn't
8 occurred yet, I agree with you. But things
9 that I focused on in the light most
10 favorable to the broad nature of the law
11 regarding discovery are those that I've
12 already suggested allegedly did take place
13 prior to the suit being filed.

14 MR. SCAROLA: And it would help me if
15 Your Honor gave me an example.

16 THE COURT: I gave two. One was the
17 filing of the federal case that increased
18 Mr. Edwards' (sic) potential financial
19 exposure as it related to the alleged
20 damages --

21 MR. SCAROLA: Did you mean Mr. Epstein?

22 THE COURT: Mr. Epstein's alleged --

23 MR. SCAROLA: I do that all the time.
24 I apologize for interrupting the Court.

25 THE COURT: Unfortunately they both

1 begin with Es. I did that before with
2 somebody else.

3 MR. SCAROLA: I just want the record to
4 be clear.

5 THE COURT: That's exactly right. It
6 potentially increases Mr. Epstein's
7 financial exposure as it related to the
8 amount of stated damages. It conceivably
9 would have -- and by virtue of the fact that
10 two cases remained pending, would have
11 increased, to some degree, his payment of
12 attorney's fees and costs associated with
13 the federal --

14 MR. SCAROLA: Had he ever been served
15 with it.

16 THE COURT: Had he ever been served.

17 MR. SCAROLA: Which he never was.

18 THE COURT: It did expose him, at least
19 to some degree.

20 MS. HADDAD COLEMAN: I'm so sorry,
21 Judge. And I really don't mean to interrupt
22 Mr. Scarola. He wasn't served with it, but
23 it was filed under the consolidated case
24 number, and he did, in fact, have to incur
25 fees to file a motion successfully to

1 dismiss that federal case.

2 THE COURT: Okay, so the point I'm
3 making is -- just to explain to you what I
4 foresee -- or what I have seen as two
5 examples, that being one of them, the other
6 being this issue -- again, I'm not here to
7 rule on the validity of these claims. I'm
8 not ever here to rule on whether or not a
9 jury is going to decide one way or the other
10 on those claims at this point in time.

11 But the other example that I raised was
12 the issue that surrounds this factoring, and
13 whether or not Mr. Edwards had any
14 involvement, whether knowingly or
15 unknowingly, to, again, somehow damage
16 Mr. Epstein. And I'm unsure as to how that
17 may have damaged Mr. Epstein.

18 But at least, as I said before, trying
19 to be as broad as I can in my analysis of
20 what may be discoverable, i.e., reasonably
21 calculated to lead to the discovery of
22 admissible evidence on this issue of the
23 bringing of the files into the Rothstein
24 inner sanctum; Mr. Adler's alleged
25 involvement in that endeavor to bring some

1 of these New York investors who were
2 apparently pushing the panic button because
3 of their lack of faith in what was
4 transpiring, according to Mr. Rothstein, as
5 I read.

6 And Rothstein's utilization of these
7 files to prop up this scheme that he
8 admitted to, and is now serving a
9 significant jail sentence as a result
10 thereof. I believe others have also
11 received jail sentences from the Rothstein
12 firm. So those are the areas of inquiry
13 that I believe, at least arguably, have some
14 merit.

15 I agree with you that why LM or why EW
16 or any of these other individuals came to
17 Mr. Edwards and what Mr. Edwards was told by
18 them as to their reason for coming to him
19 would not be subject to discovery.

20 MR. SCAROLA: Let me agree with Your
21 Honor, if I could. Those areas that you
22 have identified are legitimate areas of
23 inquiry in terms of what Mr. Epstein knew
24 about them at the time that he filed. But,
25 what Mr. Epstein cannot do, because the law

1 of privilege precludes him from doing it, is
2 to find out today what Brad Edwards said to
3 somebody else within his law firm -- one of
4 his investigators, one of the other
5 co-counsel who were helping him with this
6 case, one of the former judges of this court
7 who resigned in order to accept a position
8 with Rothstein, Rosenfeldt & Adler, and was
9 co-prosecuting this case with Brad Edwards.

10 Mr. Epstein cannot say, Tell me about
11 the conversation that you had with one
12 another about the filing of this federal
13 lawsuit, because those matters are
14 privileged. What he can't do is find out
15 what LM told him -- told Brad Edwards that
16 led Brad Edwards to file a federal claim at
17 the same time that he was prosecuting a
18 state court case on behalf of that same
19 plaintiff.

20 So there are legitimate areas of
21 inquiry with regard to those issues that
22 Your Honor has identified. But those
23 legitimate areas of inquiry don't justify an
24 invasion into privileges that are absolute.
25 And they don't justify invasions into a

1 work-product privilege when mental
2 impressions of counsel are expressly
3 excluded from discovery, because the law
4 considers the operations of an attorney's
5 mind, his mental impressions, to be
6 sacrosanct. Even when there's a reasonable
7 basis for discovering some work product,
8 mental impressions is not one of those
9 exceptions.

10 THE COURT: Well, I have gone through
11 most of these questions. I am still trying
12 to understand -- this really goes more to
13 Mr. Epstein's counsel -- what specifically
14 are the questions that you believe need to
15 be answered?

16 Discussions that Mr. Edwards may have
17 had with respect to or with Ms. Villafaña,
18 the U.S. attorney, I don't know what that
19 has to do with this particular case, other
20 than to suggest that if in fact Mr. Edwards
21 was pursuing that Victims' Rights case -- I
22 again, don't mean to minimize that by not
23 knowing the exact name -- as fuel to the
24 fire that's already existing, meaning, may
25 lead to discovery of evidence that they are

1 looking to submit, meaning that any
2 discussions that Mr. Epstein may have been
3 aware of between Mr. Edwards and
4 Ms. Villafaña or anyone else associated with
5 the U.S. Attorney's Office may have been a
6 factor in why he brought this case in the
7 first place.

8 So I'm not sure what the purpose of
9 that area of inquiry may be.

10 MS. HADDAD COLEMAN: Judge, if the
11 Court feels -- Judge, two answers to your
12 question.

13 First, if the Court has looked --
14 again, I don't mean to speak backwards, but
15 I have to -- the exhibit and witness lists
16 filed by Mr. Edwards in this case makes it
17 clear that he has no intention of litigating
18 a malicious prosecution claim. It is
19 bringing up all of these issues.

20 THE COURT: Let me deal with that,
21 okay. I can do that. I am not asking you
22 to take over what I am tasked to do, okay?
23 Excuse me a moment. Let me finish so that I
24 ask a poignant question.

25 In going through the motion, both last

1 time and with you today, as you proceeded
2 through some of these areas of inquiry, I
3 really don't know -- and perhaps its context
4 is sometimes a problem when you try to
5 extract these things instead of having a
6 whole transcript in front of me. It's
7 difficult sometimes to get the full flavor
8 of exactly what's being talked about.

9 But irrespective of the difficulties
10 that I have -- because I do these all the
11 time. In other words, I get excerpts most
12 of the time when I ask for the whole
13 transcript so that I can put it into
14 context.

15 What is it here that is relevant to the
16 claim that we are dealing with here from the
17 standpoint of Mr. Edwards' claim against
18 Mr. Epstein for malicious prosecution? For
19 example, these issues about -- where I have
20 already ruled and they're not going to be
21 overruled, the attorney-client privilege.
22 Questions like, Why did EW come? Why did
23 she hire you in the first place? What was
24 the purpose? I don't see how that is
25 involved with anything of any significance

1 as it relates to the malicious prosecution.

2 MS. HADDAD COLEMAN: Judge, I would
3 agree with you 100 percent. The problem we
4 have and the issue with which we're faced
5 and the reason we're asking these questions
6 of Mr. Edwards is because he has listed them
7 as witnesses in this case.

8 Number one, we're deposing them soon.
9 Number two, the exhibit list, if the Court
10 has not yet looked at it -- again, I would
11 hope that you would rule to keep it all out,
12 because I agree it's irrelevant.

13 However, if Mr. Edwards is going to be
14 permitted, he can't pick and choose what
15 parts of the privilege he's willing to
16 waive.

17 If he wants to list these girls for
18 whom he was prosecuting cases as witnesses,
19 when he, A, probably should have received
20 their permission to waive the privilege
21 before he listed them as witnesses, or B,
22 made sure he wasn't not knowing where their
23 file boxes were for a month while Rothstein
24 was using them to further a Ponzi scheme --
25 either way, we did not make the them an

1 issue. Mr. Edwards is. We are now
2 defending.

3 If the Court is saying that these --
4 testimony from these women is not going to
5 come in, or that Mr. Edwards cannot use
6 discovery or documentation from the
7 underlying civil suits or attempts at
8 criminal prosecution of Mr. Epstein in this
9 case, then I would agree with you none of
10 that is inquiry that's appropriate.

11 However, based on the information we
12 have in litigating since 2009, it appears to
13 me, as the person defending this case, that
14 Mr. Edwards is determined to try this as a
15 criminal case against Mr. Epstein using
16 these allegations purportedly by these women
17 as his basis.

18 What we would like to see happen and
19 the evidence I would like to get from
20 Mr. Edwards at this time is evidence of what
21 was going on at RRA during the time he was
22 prosecuting these cases.

23 Judge, our undisputed facts solely deal
24 with what went on at RRA and what
25 Mr. Epstein knew at that time, and those are

1 the questions we are asking.

2 THE COURT: I don't have a whole lot
3 of -- I don't have a problem with you, as I
4 said before, getting into those areas of
5 inquiry where I think at least they can be
6 vetted, the federal case mirroring the state
7 case.

8 Why Mr. Edwards did what he did is
9 probably going to be met with objection.
10 Whether or not that case was filed, whether
11 or not Mr. Epstein was served -- and I don't
12 know what the ruling is going to be if there
13 is an objection. Perhaps there is not going
14 to be an objection.

15 Certainly, however, assuming we get to
16 the point that this is all going to go in
17 front of a jury, and Mr. Epstein is going
18 take a position that a reason for him
19 bringing the case that he did was because of
20 his perception as to why the federal court
21 case was brought but never served that met
22 with an order of Judge Marra, as I
23 understand, of dismissal, Mr. Edwards may
24 need to explain that.

25 But that's not before me here. What's

1 before me in pertinent part is this. A line
2 of questioning regarding why was he hired by
3 people name EW and LM. Clearly,
4 attorney-client privilege and it maintains
5 throughout, so, including now.

6 Questions then regarding conversations
7 between Mr. Edwards and the U.S. attorney --
8 or assistant U.S. attorney, Ms. Villafaña,
9 V-I-L-L-A-F-A-N-A, for the record -- we next
10 get into a short discussion of -- I don't
11 know what that's supposed to be. I guess
12 that has something to do with Mr. Adler, but
13 I don't understand the context.

14 Then we get into an issue regarding TV
15 stations and why he didn't want his clients
16 to do interviews with TV stations. Again, I
17 don't see any relevance to this malicious
18 prosecution claim.

19 The next is with this woman Maxwell,
20 and what the connection was between Jane Doe
21 and LM, if any, with Maxwell.

22 MR. SCAROLA: May I address something
23 so Your Honor has the factual background?

24 Ms. Maxwell is alleged, through sworn
25 testimony of multiple witnesses, to have

1 been Mr. Epstein's principal procurer of
2 child victims. She would go out and
3 prospect for those victims for Mr. Epstein,
4 and is one of those individuals whom
5 Mr. Epstein somehow managed to obtain
6 federal immunity for in the negotiation of
7 his non-prosecution agreement.

8 So that's -- from a factual standpoint,
9 that's Ms. Maxwell's fitting into this
10 picture.

11 The other individual that Your Honor
12 asked about was Mr. Rodriguez, who was
13 described as a housekeeper. I think he was
14 more accurately -- could be more accurately
15 described as a houseman or butler.

16 THE COURT: At the Epstein home in Palm
17 Beach.

18 MR. SCAROLA: At the Epstein home. He
19 was an eyewitness to comings and goings of
20 many young females over the course of an
21 extended period of time, and also identified
22 other guests going in and out of the Epstein
23 Palm Beach mansion during the same period of
24 time.

25 At one point in time Mr. Rodriguez

1 offered for sale a telephone directory that
2 belonged to Mr. Epstein and included the
3 names and contact information for a number
4 of the young female victims as well as
5 others with whom Mr. Epstein was
6 associating. And Mr. Rodriguez was
7 ultimately criminally prosecuted for the
8 efforts to sell that evidence. But the
9 evidence was ultimately obtained and became
10 part of the probable cause for the criminal
11 prosecution of Jeffrey Epstein, and for the
12 civil prosecution of claims against him as
13 well.

14 So those are the two individuals that
15 Your Honor requested some background
16 information about. That's the background
17 information.

18 Kendall Coffey -- Kendall Coffey was an
19 individual outside the Rothstein,
20 Rosenfeldt, Adler firm who was considered to
21 be an ethics expert, who was consulted about
22 how to respond to Mr. Rodriguez's effort to
23 sell these materials.

24 THE COURT: He was a former U.S.
25 attorney, correct, in the southern district?

1 MR. SCAROLA: Yes, Your Honor.

2 THE COURT: So that's a long time ago.

3 MR. SCAROLA: It is quite sometime ago.

4 But you and I are both of the age where we
5 remember that.

6 THE COURT: Obviously, he was outside
7 his official capacity.

8 MR. SCAROLA: Yes.

9 THE COURT: Special appointment or
10 otherwise, he was an attorney at the time?

11 MR. SCAROLA: Correct.

12 MR. GOLDBERGER: Your Honor, I just
13 need to clarify a couple of points that
14 Mr. Scarola incorrectly made.

15 THE COURT: Sure.

16 MR. GOLDBERGER: I had a significant
17 part in the non-prosecution agreement of
18 Mr. Epstein, and Ms. Maxwell was never
19 granted immunity and was not part of that
20 non-prosecution agreement. That statement
21 that Mr. Scarola made was certainly not
22 true. There's no mention of Ms. Maxwell in
23 the non-prosecution agreement in any way,
24 shape or form, nor was she granted immunity.

25 As to Mr. Rodriguez, Mr. Rodriguez was

1 either the houseman or the butler. But
2 whatever information that he stole from the
3 Epstein home had nothing to do with the
4 prosecution of Jeffrey Epstein and was not
5 part of any state prosecution. So those are
6 absolutely inaccurate statements.

7 I don't know if they matter to the
8 Court in the issues you need to deal with
9 today, but I needed to make sure the record
10 is clear.

11 THE COURT: That's fine. You can state
12 for the record anything that you disagree
13 with. I certainly I appreciate that.

14 Then we get into the first question.
15 It says -- now I'm on page seven -- quote,
16 "In this particular instance associated with
17 Mr. Epstein, what investigators worked on
18 Mr. Epstein's case during the time you were
19 at RRA?"

20 Mr. Edwards responded to the question.
21 And then immediately thereafter -- or least
22 within a few lines -- it went directly to a
23 gentleman by the name of Mr. Fisten, who, as
24 I recall through the documents, was one of
25 the investigators along with Ken Jenne and

1 someone else that I can't recall the name at
2 the RRA firm during the pendency of most of
3 the matters that we are dealing with today.

4 Then they go on to talk about things,
5 again, that have -- at least from my vantage
6 point -- relative and marginal, if any,
7 relevance to what we are dealing with in
8 this particular case.

9 MR. BREWER: Your honor, if I might.

10 THE COURT: Yes, sir.

11 MR. BREWER: I rise because I just want
12 to remind the Court the argument that you
13 heard this morning that Mr. Epstein, because
14 he is such a bad person, knew that
15 everything that Brad Edwards did was
16 justified, and he knew that everything that
17 Brad was saying was true. And then we have
18 the allegation coming on top of that that
19 Mr. Edwards says everything that I did was
20 proper and ethical. And they want to then
21 get into a number of matters -- or got into
22 a number of matters saying when we get to
23 the element of malice -- when we get to
24 malice -- this was said this morning --
25 these are important because it shows that

1 Jeffrey Epstein had malice in his heart when
2 he filed this lawsuit.

3 Mr. Edwards should not be allowed at
4 this point to say everything that I did was
5 right, and then there be no inquiry into
6 what he actually did and why he did it.

7 THE COURT: What I have said throughout
8 this afternoon's process is that I'm more
9 than willing to at least broach the subject
10 of having Mr. Edwards -- to the degree that
11 it would be permissible -- account for
12 certain issues that have been legitimately
13 raised. That's why I repeated twice at
14 least two things that have been brought to
15 my attention through the pleadings and
16 through the arguments of this federal court
17 case and the factoring issues that are
18 involved.

19 The problem is none of that that I have
20 gone through thus far really gets into
21 either of those issues, and again, gets into
22 matters of attorney-client privilege, which
23 has already been discussed, and which
24 Ms. Haddad Coleman also discussed, and, I
25 think, candidly suggested were not subject

1 to further inquiry.

2 Then we get into who performed
3 investigations on the Epstein files.

4 MR. BREWER: Is Your Honor aware that
5 the allegations with regard to the -- going
6 through Mr. Epstein's trash to pull out
7 particularly incriminating objects, that
8 apparently did transpire on the part of
9 these investigators?

10 THE COURT: Okay.

11 MR. BREWER: And I think it's actually
12 covered in Rothstein's deposition --
13 somebody's deposition I read -- where they
14 were talking about we have got other people
15 that are on the line because we go through
16 people's trash.

17 THE COURT: And that's a police matter.
18 If someone goes through someone's trash and
19 is not authorized to do so -- I don't even
20 think that you need a warrant any longer to
21 go through people's trash, so I don't know
22 if it's a crime or not a crime.

23 But the point I'm making again is it's
24 the same thing that Ms. Haddad Coleman
25 raised. It only fuels the fire from my

1 objective standpoint on those questions
2 toward why Mr. Epstein brought this case
3 against Edwards at all in the first place,
4 meaning, it could be reasonably inferred
5 that he was upset that these people were,
6 among other things, going through his trash
7 and finding whatever objects that they may
8 have found. That may have spurred,
9 arguably, him to have brought this case.

10 So again, I don't really see what the
11 nature or the issues are that benefits
12 Mr. Epstein's inquiry to these things that
13 make any sense to me at all.

14 MR. BREWER: It seems to me, Your
15 Honor, if there was impropriety on
16 Mr. Edwards' part, i.e., we don't know to
17 this day whether he really knew what was
18 going on within the Rothstein firm while he
19 was there, we don't know that. It's
20 arguable that he should have -- I have been
21 practicing law for 39 years.

22 And you have 13 boxes on the three main
23 cases that you are prosecuting that go and
24 stay outside your office in somebody else's
25 office for whatever period of time -- we

1 have heard three weeks. We have days.
2 Whatever. You know something is going on.
3 You may not know exactly what's going on,
4 but you know.

5 And it seems like if we are going to be
6 faced with this argument that everything
7 that he did while he was at the Rothstein
8 firm was ethical, proper and in his ethical
9 duty or fiduciary duty to protect or to go
10 forward with the claim of his clients, there
11 should be some inquiry allowed as to what he
12 did. We know a lot of what he did. But
13 then go back behind that and also say, Why
14 did you do it?

15 THE COURT: I will need some cases,
16 because I continue to have some concern
17 about whether or not his explanation for
18 why, for example, he filed that federal
19 case, whether or not that's even
20 discoverable and that's not privileged. I
21 don't know one way or the other right now.

22 But, you know, again, if those were the
23 questions that were asked, we can at least
24 sink our teeth into the issues.

25 I don't know who took this deposition,

1 and I am not here to criticize it. They may
2 well have had reasons for asking questions
3 in 2010 and 2013, respectively, that are no
4 longer of any moment today. So I am not
5 being critical. And I am sure there are
6 good reasons to find out whether or not
7 Mr. Edwards spoke to Mr. Rodriguez, or what
8 Mr. Edwards' contact was, again, now with
9 Ms. Villafaña or the FBI agent.

10 The joint prosecution agreement, I
11 presume that it must have been important at
12 that time. I don't see it as really
13 important now, other than potentially as
14 evidence to be used by Edwards.

15 MR. BREWER: If he's going to use that
16 as evidence, we should be able to inquire
17 with regard to that evidence and do the
18 discovery as to that point.

19 THE COURT: Well, if that's what's
20 going to be done, then that can be -- that
21 may be a point -- I don't know if
22 Mr. Scarola will ever get into that
23 questioning with his own client or is
24 claiming that that's in any way, shape or
25 form part of his claim.

1 MR. BREWER: Your Honor, they pled it.

2 THE COURT: Sorry?

3 MR. BREWER: They pled it.

4 THE COURT: They pled what?

5 MR. BREWER: They pled everything that
6 Mr. Edwards did was proper, ethical, and
7 that it was in furtherance of the claims of
8 his client to further their claims. That's
9 what they are claiming. We should be
10 allowed on the specific actions that he took
11 in furtherance of his clients' claims to
12 inquire whether those actions were in fact
13 in furtherance of his client's claims or
14 not, or was there some other motive that was
15 involved in taking those actions.

16 And you've pinpointed a couple of them.
17 They're pretty highly suspicious.

18 THE COURT: I'm not suggesting
19 suspicious.

20 MR. BREWER: I'm suggesting suspicion.
21 I'm saying to you, you have pointed them
22 out.

23 THE COURT: Well, the only thing I'm
24 saying is I'm trying to come up with
25 something in terms of when looking at the

1 broad nature of discovery allowed in
2 Florida -- as dictated by our appellate
3 courts, including the supreme court -- of
4 the broad nature of allowable discovery and
5 distinction from what may be admissible.

6 I'm looking at two points that have
7 been made over the written documents and the
8 arguments that have been made that could at
9 least conceivably provide some fodder for
10 cross-examining or examining Mr. Edwards.
11 The problem, as I said, is there's very
12 little of that that really went into these
13 particular issues.

14 Now, on page 13 there are questions
15 concerning a meeting that he had with
16 Mr. Rothstein -- or in Mr. Rothstein's
17 office with Russell Adler. I apologize, but
18 it's the way it was written and the way it
19 was transcribed that was confusing.

20 The question is -- verbatim -- quote,
21 The one meeting that you had in
22 Mr. Rothstein's office with Russell Adler
23 and some unknown person on the phone, were
24 you given any direction at that time that
25 certain discovery should be done or certain

1 tactics should used with regard to
2 prosecuting the Epstein cases?"

3 I believe that that's a question that
4 can be asked.

5 Now, the question that follows up --
6 now again, it may not be specifically
7 followed up -- because there's no three dots
8 to separate it -- but the pages appear to be
9 different, one page later.

10 The next question, What did -- What
11 information did Mr. Rothstein send you that
12 involved Mr. Epstein?

13 And he was also -- there's also the
14 same objection, same instruction.

15 Mr. Scarola, what's your position on
16 that question?

17 MR. SCAROLA: Anything that went on
18 within that firm in the absence of evidence
19 that would demonstrate that the
20 attorney-client privilege is not applicable
21 because of crime-fraud exception --

22 THE COURT: This wouldn't be
23 attorney-client privilege. This would be
24 work product.

25 MR. SCAROLA: Or the work-product

1 privilege was not applicable because of a
2 crime-fraud exception.

3 THE COURT: What about Rothstein's
4 continued admissions in the deposition that
5 I read of his purpose -- essentially sole
6 purpose -- was to engage in this Ponzi
7 scheme; clearly was the head of this Ponzi
8 scheme; clearly was the one who was
9 manipulating these files by his own
10 admission in order to profit by way of
11 obfuscating the true nature of these files
12 and inflating them creating a multi-million
13 dollar -- tens of millions of dollars in
14 some type of a false, fraudulent endeavor?

15 The question reads what information did
16 Rothstein send you that involved Epstein?
17 I'm hard-pressed to believe that Rothstein
18 in the admitted capacity that he
19 testified -- he was not working on the
20 Epstein case. He was not contributing to
21 prosecution of the claims. He was
22 essentially, by his own admission,
23 manipulating these files as to gain his own
24 pecuniary interest and to line his own
25 pockets as a result of selling shares of

1 these cases to unwitting individuals, or
2 maybe those who may have had their wits
3 about them. I don't know.

4 But why wouldn't the crime-fraud
5 exception be appropriate and applicable here
6 as it relates to anything that Rothstein may
7 have said to Mr. Edwards? And again, he may
8 not have said a thing. I don't know.

9 But if there was anything said by
10 Rothstein in the capacity that Rothstein
11 held is essentially an admitted criminal at
12 all times material to this analysis --

13 MR. SCAROLA: Nothing essential about
14 it.

15 THE COURT: Admitted criminal.

16 Thank you, sir. I appreciate that.

17 Why would anything under the guise of
18 work product privilege be in any way
19 affiliated with Mr. Rothstein, and why would
20 it not at least be reasonably calculated to
21 lead to the discovery admissible evidence as
22 it pertains to Epstein's claims originally
23 against Rothstein, Edwards, and to some
24 degree, LM, to establish some indicia of
25 probable cause?

1 MR. SCAROLA: If this were
2 Mr. Rothstein standing before the court
3 attempting to assert any privilege that is
4 excepted to by crime-fraud activity, the
5 answer would be there is no privilege.
6 Crime-fraud exception applies.

7 This is not Mr. Rothstein. This is
8 Mr. Edwards. There is no evidence that
9 Mr. Edwards participated in any crime or
10 fraud.

11 THE COURT: And I'm not suggesting he
12 did. I want to make that clear. But what I
13 am saying is it's not what Mr. Edwards said
14 to Rothstein that's being questioned. It's
15 what Rothstein said to Edwards, if anything.

16 Again, I'm not suggesting he had
17 anything to say.

18 MR. SCAROLA: Quite frankly, I think
19 the answer is nothing, but I don't know that
20 either, as I stand here.

21 THE COURT: Fair enough. And I
22 appreciate that. I'm not suggesting there
23 was anything said, and I don't want that to
24 be a matter of record.

25 My point is that a good faith

1 work-product privilege protects the mental
2 impressions of counsel and those whom he is
3 working with in what I perceive to be, at
4 least parenthetically, the legitimate
5 prosecution or defense of a given case.

6 MR. SCAROLA: We agree.

7 THE COURT: And if Rothstein was
8 engaged in discussions with Mr. Edwards,
9 from the standpoint of what Rothstein said
10 to Edwards, in conjunction with the
11 testimony of Rothstein relative to his
12 clearcut, unadulterated, admission that he
13 was at the pinnacle of this Ponzi scheme
14 that directly involved cases that he was
15 handling -- strike that -- cases that were
16 in his firm.

17 And again, anecdotally we know of this
18 inner sanctum. We know of this
19 difficult-to-breach security system than he
20 had that protected him, and I believe it was
21 one secretary. We know of his unwillingness
22 to share anything; that there was, by his
23 testimony -- Rothstein, and by others -- a
24 legitimate side to the business.

25 But what Rothstein was perpetrating

1 here -- again, all times material to this
2 analysis, including the time that we are
3 talking about relative to the LM case -- was
4 nothing more than a complete and entire
5 fraud, and criminal activity unabated.

6 I wonder why anything that Rothstein
7 may have said -- so as to go back to the
8 defense of the issue -- the element and also
9 the defense to probable cause would not, at
10 least at this point, reasonably be
11 calculated to lead to the discovery of
12 admissible evidence.

13 MR. SCAROLA: Let me approach it from
14 this perspective.

15 THE COURT: We will take a break
16 momentarily.

17 MR. SCAROLA: First, I acknowledge that
18 I don't know whether Rothstein said anything
19 to Brad Edwards that would be of any
20 relevance to anything under any
21 circumstances. But, the issue before this
22 Court in this case is whether Mr. Epstein
23 had probable cause to believe that Brad
24 Edwards was somehow a participant in the
25 Ponzi scheme. Did he have reason to believe

1 that, even if mistaken belief.

2 I'm sure Your Honor saw on the
3 materials that were submitted to the Court
4 that that question was directly posed to
5 Mr. Epstein. What evidence do you have that
6 Brad Edwards was a knowing participant in
7 the Ponzi scheme? To which Mr. Epstein's
8 response was, I refuse to answer on the
9 grounds that it may tend to incriminate me.

10 He refuses to give any evidence with
11 regard to that matter, so how can he -- and
12 we are getting into an area that I know the
13 Court didn't want to deal with today, but it
14 is directly relevant to the inquiry Your
15 Honor is making.

16 How can he attempt to suggest that he
17 had a good faith reliance upon something
18 that Rothstein said to Epstein in the
19 privacy of this tightly -- that Rothstein
20 said to Edwards in the protection of this
21 highly guarded office? How could he
22 possibly say that I relied upon that
23 statement, that he couldn't have known
24 about, that he didn't know about, and that
25 he refuses to answer any questions about?

1 THE COURT: How does that differ,
2 though, from a simple automobile accident
3 case and the allegation of defense of a
4 pre-existing condition, and that the subject
5 accident not cause or approximately cause
6 the current condition complained of by the
7 plaintiff?

8 Now, the defendant doesn't know all of
9 the information at the time the lawsuit is
10 brought to reasonably consider that -- let's
11 say a 75-year-old person who is claiming
12 neck and back injuries, and it's a
13 preoperative procedure, no operation, no
14 surgeries, they are entitled to know,
15 though, all of background concerning this
16 person's medical history, and at least as it
17 relates to the neck and back; and any prior
18 accidents; any prior injuries; any prior
19 doctor visits; anything of that nature that
20 would come into the fold.

21 The allegations for the facts being
22 stated, they are just that. They are
23 allegations. Now the table has turned,
24 because now it's Mr. Edwards bringing the
25 claim against Mr. Epstein.

1 But I agree that most of the inquiry
2 has to begin when Mr. Epstein brought the
3 suite against Edwards, et al. But at the
4 same time, I don't think that he is
5 necessarily and completely and entirely
6 harnessed to that particular snapshot of
7 information. And you can argue that to the
8 jury. I have no problem with that.

9 But in order to bolster his defenses to
10 the malicious prosecution claim and to show
11 that he had probable cause, I don't see that
12 he should be completely and entirely
13 restricted from engaging in substantive
14 discovery to support whatever those
15 allegations may be.

16 So let's leave it at that.

17 MR. SCAROLA: May I make one further
18 comment in that regard, Your Honor?

19 THE COURT: At the risk of making our
20 court reporter mad, yes, sir.

21 MR. SCAROLA: She is an extraordinarily
22 tolerant young woman who I know will give me
23 the benefit of just a moment's comment on
24 that.

25 THE COURT: Go right ahead.

1 MR. SCAROLA: There is a real concern
2 that the testimony could be tailored to meet
3 the discovery that is now attempting to be
4 obtained.

5 So while the Court -- and I will
6 acknowledge appropriately -- considers that
7 some wide latitude should be granted with
8 regard to discovery, I respectfully suggest
9 that Mr. Epstein should be obliged, if he
10 intends to waive his Fifth Amendment Rights,
11 to answer those questions first and not get
12 the information and then be able to say, Oh,
13 Yeah, I knew about that. That was part of
14 the probable cause I relied upon when we
15 asked him directly in discovery that
16 precedes all of this, What did you know?
17 When did you know it? And his response is,
18 I refuse to answer on the basis of Fifth
19 Amendment privilege.

20 So if Your Honor is considering opening
21 the door to these questions -- and quite
22 frankly, we spent more time arguing over
23 something that may not even exist than that
24 it's worth -- but if Your Honor is
25 considering compelling us to respond to

1 those questions, deal with the Fifth
2 Amendment issues first so that we get
3 Mr. Epstein on the record as to what he knew
4 before we feed him what he would like to
5 have known.

6 THE COURT: Good point. Thank you. We
7 will back on about 20 after 3, please.

8 (A recess was had 3:10 p.m. - 3:20 p.m.)

9 MR. GOLDBERGER: I need to raise a very
10 last issue that just came up. You know, I
11 may practice on the other side of the
12 elevator most often, but what I just heard
13 just amazed me.

14 Mr. Scarola gets up here and says,
15 depending on how the Court rules, I want
16 Mr. Epstein to testify first if he's going
17 to waive his Fifth Amendment privileges
18 because he, quote, may tailor his testimony.
19 Translated, he's suggesting that Mr. Epstein
20 is somehow going to perjure himself.

21 THE COURT: I don't think he's saying
22 that. I think what he's saying is, if
23 Mr. Epstein is not compelled to testify
24 first, he may try to prove his case through
25 the discovery provided by others.

1 And there is a line of case law that
2 guards against that proposition. In other
3 words, the general theory. I am not
4 quoting. It's my recollection, essentially,
5 that discovery cannot be principally had so
6 as to find out information that you didn't
7 already know from the other side and build
8 your case accordingly.

9 MR. GOLDBERGER: I understand that.
10 Mr. Epstein has clearly stated his grounds
11 for bringing the lawsuit. It's a five-page
12 affidavit that he filed in conjunction with
13 his motion for summary judgment that sets
14 forth what he was thinking and why he filed
15 the lawsuit.

16 THE COURT: I understand. After a
17 while you kind of used to -- you get used to
18 rhetoric. You get used to people posturing.
19 Good lawyers often do their best to shed
20 things or to state things in a light more
21 favorable to their client, but I didn't take
22 it that way.

23 MR. GOLDBERGER: Okay. That's good.

24 THE COURT: The way I took it was the
25 fruits of Edwards' discovery should not be

1 the groundwork of Mr. Epstein's claims.

2 MR. GOLDBERGER: I agree with that. I
3 just don't want there to be any suggestion
4 on this record whatsoever that Mr. Epstein
5 in any way would perjure his testimony.

6 THE COURT: I didn't take it that way,
7 and I didn't take it as suggested by
8 Mr. Scarola in that fashion as well.

9 MR. GOLDBERGER: Thank you.

10 THE COURT: You're welcome.

11 Now why don't we go ahead and -- let me
12 hear from Ms. Haddad, because what I would
13 like to know is -- I think the best way to
14 handle this is to not so much focus on what
15 was asked at a deposition, again, where I
16 indicated that the timing of same, the dates
17 of same would have been different than what
18 may be now is really the core issues that
19 need to be discovered.

20 So why don't you present to me, if you
21 can, what you believe the areas of inquiry
22 will be, and let's see where we can forge
23 and at least attempt to enter into some
24 common ground, if possible.

25 MS. HADDAD COLEMAN: Judge, I don't

1 know that I'm fully prepared to go into
2 great detail about that, because, again, it
3 wasn't part of what I was anticipating for
4 today. But I would say that the two broad
5 areas about which deposition testimony
6 should be compelled for Mr. Edwards would
7 be, number one, the undisputed facts that we
8 laid out in our motion for summary judgment
9 because they are the facts that Mr. Epstein
10 has stated twice under oath in his affidavit
11 and in deposition testimony -- which, again,
12 we will provide to the Court, contrary to
13 Mr. Scarola's assertions -- that are the
14 facts upon which he relied at the time he
15 filed suit.

16 Directly in response to that,
17 Mr. Edwards has repeatedly asserted, I did
18 everything right. I didn't do anything
19 wrong and Mr. Epstein knows it. Great.
20 Then tell us what you did that was right.
21 Tell us why we were wrong.

22 And again, Judge, it's what Mr. Epstein
23 knew at the time. And Mr. Epstein has
24 clearly and unequivocally not hidden the
25 ball. He has laid out what he knew at the

1 time. And it's all a matter of public
2 record.

3 Conversely, Mr. Edwards is hiding
4 behind every privilege he can think of to
5 not answer questions about his dealings when
6 he was a partner at RRA. And one of the
7 issues -- the Court did point out two that
8 are correct. But one of the third issues
9 that probably should have stood out to the
10 court -- if I had more time -- I would have
11 prepared it for you -- is at the time in
12 question, about a month before RRA imploded,
13 Brad Edwards filed a motion before Judge
14 Marra in the, I believe, Jane Doe case
15 versus Epstein, asking that Mr. Epstein post
16 a \$14 million bond. No reason for this.
17 There was no pleading. No responsive motion
18 to which this would have been warranted in
19 any way, shape or form.

20 This motion delineated in great detail
21 all of Mr. Epstein's net worth: airplanes,
22 bank accounts, businesses, homes, things of
23 that nature. And Judge Marra wrote an order
24 basically striking it down, calling it
25 frivolous. That was another motion that was

1 filed Mr. Edwards on behalf RRA, again,
2 during the time when the boxes were in
3 Mr. Rothstein's layer and during the time
4 when he signed the document, he was the
5 partner in charge of these cases.

6 So if the Court is going to list for us
7 issues about which we're allowed to depose
8 Mr. Edwards about actions he took, I think
9 everything we raised in our motion for
10 summary judgment -- he hasn't answered any
11 of those questions yet, Judge. So anything
12 germane to our undisputed facts, the facts
13 that Mr. Epstein has already said he was
14 relying on at that time.

15 And if Mr. Edwards defense is, I did
16 everything right, I wasn't involved. I did
17 nothing wrong, and Epstein know it, then
18 Edwards should be held accountable to answer
19 those questions.

20 The second area, Judge, is about his
21 damages. This isn't a case where, yes, he
22 has to plead in excess of \$15,000. I
23 understand that. Damages are an actual
24 element of this case. He has to prove he
25 was damaged.

1 As they've been repeatedly saying since
2 I've been sitting here, we're not sure what
3 Epstein's damages were. I heard Mr. Scarola
4 say Mr. Epstein wasn't a victim of the Ponzi
5 scheme. But he was.

6 The amount of attorney's fees he
7 incurred by the abuse of process that
8 occurred while these cases were prosecuted
9 by RRA is tremendous, in addition to the
10 other issues that were raised in federal
11 court and in state court, pursuant to which
12 he was called to defend these actions or put
13 out fires.

14 THE COURT: Just so the record is
15 clear, I was talking about what damages he
16 may have sustained as a result of Rothstein
17 factoring these cases. That was my
18 question.

19 MS. HADDAD COLEMAN: And, Judge, our
20 position all along has been the abuse of
21 process committed by RRA, Mr. Rothstein, and
22 possibly Mr. Edwards, that we believe at the
23 time that he was involved did cause him
24 damages, the factoring -- engaged in
25 excessive discovery; putting out fires;

1 subpoena; things of that nature.

2 So we do feel that Mr. Edwards --
3 because he's claiming damages and is seeking
4 punitive damages and is not willing to
5 accept stipulation of net worth from
6 Mr. Epstein -- he clearly believes that he
7 has some serious, serious damages in this
8 case. So we feel that he should be required
9 to answer discovery questions related to his
10 financial damages and otherwise his
11 mental -- I forget what he claimed them to
12 be -- but they're all kind of delineated in
13 our motion, Judge.

14 So I think those are the two areas
15 about which he should be, at a minimum,
16 required to answer deposition testimony.

17 THE COURT: Okay, well, a couple
18 things. I appreciate again, both sides'
19 positions here. I have been trying to scan
20 through these interrogatories and the
21 answers that have been provided, and I
22 think, like in any other case where damages
23 are being sought, they have to be proven,
24 and any future damages be proven with
25 reasonable certainty, and the past damages

1 has to be proven as well.

2 Let's look at the questions. Let's
3 scroll down a little bit and see if we might
4 be able to find a reasonable median so as to
5 get this moving.

6 MS. HADDAD COLEMAN: I'm sorry, Your
7 Honor, what you are looking at.

8 THE COURT: I'm looking at the
9 unverified responses that were filed
10 recently.

11 MR. SCAROLA: As to which there's no
12 motion pending presently, Your Honor.

13 THE COURT: Well, what I was going to
14 say is, we can do this by 8:45 or we can do
15 this now. It was recently filed. I
16 understand there may not be motion pending
17 as far as these are concerned.

18 I would like to get them done, because
19 I am going to order that Mr. Edwards be
20 redeposed. I am going to order that he may
21 be questioned as it relates to the broad
22 probable cause areas of inquiry that I have
23 earlier dealt with.

24 And I'm also going to order that he
25 testify and be examined regarding the

1 damages that he allegedly sustained as a
2 result of the malicious prosecution claim.

3 So he would be required to be
4 forthcoming. I thought that we may be able
5 to save a little time if we go through these
6 interrogatories and determine what may be
7 appropriate and what may not be appropriate,
8 because there may be areas that I believe
9 are far too private and of that nature, so
10 that I could save you the trouble of having
11 to come back.

12 But if there's a due process issue of
13 notice, then I have no problem with waiting
14 for another day.

15 MR. SCAROLA: Your Honor, I am pleased
16 to try to proceed as far as we can with the
17 understanding that I haven't even had an
18 opportunity to consult with my client about
19 any motion to compel, because there is no
20 motion to compel.

21 But I agree we've got some time
22 available. I would prefer not to waste that
23 time. I would strongly prefer that we can
24 resolve whatever issues need to be resolved,
25 so that if there's further discovery to be

1 taken, it can be taken without delaying the
2 trial.

3 So let me see what I can do to try to
4 address some of the issues that Your Honor
5 has identified. You have said that
6 Mr. Edwards is to be deposed with regard to
7 the broad probable cause he had for the
8 filing of his claims. And I assume you are
9 referencing the lawsuits that he filed
10 against Jeffrey Epstein on behalf of his
11 clients; is that correct?

12 THE COURT: What I'm talking about
13 right now are the areas that have been
14 identified. The filing of the federal suit
15 that mirrored the state claim, the LM claim.
16 The issues regarding what if any knowledge
17 he may have had concerning the crimes
18 committed by Mr. Rothstein and others, which
19 I believe -- and I don't want to disparage
20 anyone's name, but I believe Mr. Adler and
21 the second name of Rothstein firm --

22 MS. HADDAD COLEMAN: Rosenthal (sic).

23 THE COURT: -- Rosenthal were also
24 prosecuted successfully, if I'm not
25 mistaken, correct?

1 MS. HADDAD COLEMAN: Judge, I know
2 Mr. Adler was prosecuted for a campaign fund
3 issue, not for anything, I believe, directly
4 related to the Ponzi scheme.

5 Stuart Rosenfeldt --

6 THE COURT: Rosenfeldt.

7 MS. HADDAD COLEMAN: -- I'm not sure
8 the indictment for which he was prosecuted.

9 THE COURT: Like I said, I don't want
10 to say anything that is incorrect. But
11 certainly as relates to this factoring issue
12 and its relationship to the cases that were
13 being prosecuted by Edwards at the time of
14 those meetings that I discussed earlier with
15 the New York investors and the attempt,
16 allegedly, that involves Mr. Adler and
17 Mr. Rothstein to manipulate those files, any
18 knowledge he may have had in that regard, I
19 believe that those areas are available for
20 inquiry.

21 MR. SCAROLA: May I ask one question to
22 the Court?

23 THE COURT: Sure.

24 MR. SCAROLA: Any knowledge that Brad
25 Edwards had regarding any impropriety that

1 was going on within Rothstein, Rosenfeldt &
2 Adler relating to any Ponzi scheme, those
3 are areas that were the subjects of earlier
4 deposition testimony. And also testimony of
5 Mr. Edwards' affidavit.

6 I have no problem in repeating answers
7 that were already given to questions that
8 were already asked, but I just want to point
9 out the fact that those were areas as to
10 which there was no objection.

11 Mr. Edwards has testified clearly and
12 unequivocally he knew nothing about any
13 Ponzi scheme, he had no participation in any
14 Ponzi scheme, he had no idea about any
15 misuse of any of his files.

16 THE COURT: Again, I don't want to
17 suggest that that's my concern. What I am
18 trying to accomplish by virtue of allowing
19 the inquiry to these areas that I have
20 mentioned is to allow Mr. Epstein to be able
21 to defend himself as it relates to the
22 element primarily proximate cause and
23 malice, for that matter, as well.

24 So both of those areas of inquiry have
25 to be proven by the plaintiff now -- now

1 plaintiff, formerly counter-plaintiff, but
2 formerly defendant counter-plaintiff
3 Edwards. They have to be proven.

4 But at the same time, as I indicated
5 earlier on a rather basic example an analogy
6 that I used in BI context, Epstein has a
7 right to discover those matters to fortify
8 to some degree his allegations and to
9 fortify his belief that these claims were
10 taken at the time they were filed.

11 Now, those areas, I'm going to allow.
12 The other area is then damages. Now, as
13 you've indicated and I appreciate your
14 willingness to cooperate to the best of your
15 ability without your clients being here and
16 providing input. For the record, I am not
17 trying to --

18 MR. BREWER: Excuse me, Your Honor. I
19 hate to interrupt. I apologize. But we
20 also were concerned with regards to the
21 filing of that motion to present a bond or
22 to -- \$15 million bond.

23 THE COURT: The \$14 million bond issue,
24 I don't have a problem with that either.
25 You can get into that. That has to do with

1 the federal case, as I recollect.

2 Again, I am providing that broad scope
3 of inquiry on that federal issue that
4 ultimately led to Judge Marra dismissing
5 that case that was not served on
6 Mr. Epstein.

7 MR. SCAROLA: May I try to get a little
8 bit specific in that regard so that we avoid
9 having to come back before Your Honor?

10 I would anticipate asking questions,
11 such as, What was your motivation in the
12 filing of the federal lawsuit? What was the
13 tactic that you were seeking to pursue in
14 the filing of that claim?

15 I would and will, for the record, raise
16 an objection that that is a direct inquiry
17 into the mental processes of Mr. Edwards.
18 And I would like to know in advance whether
19 knowing that that's the objection that will
20 be raised, Your Honor is overruling the
21 objection.

22 THE COURT: I not overruling the
23 objection. But I think the question can be
24 crafted in another way.

25 For example, I likely will allow a

1 question such as, Can you point to any
2 material difference between the case that
3 was brought in state court versus the case
4 that you brought in federal court?

5 MR. SCAROLA: Again, what that question
6 asks for is Mr. Edwards' legal analysis of
7 the contents of those two claims. And
8 again, I would object to that on the basis
9 that that is attorney-work product.

10 What one case says and what the other
11 case says is apparent on the face of the
12 claims, and Mr. Edwards ought not be obliged
13 to provide his legal opinions, which are
14 protected -- clearly protected mental
15 impressions of a lawyer and are work
16 product.

17 So again, I'm trying -- I don't want to
18 be back here raising objections that Your
19 Honor has already considered and overruled
20 that's the objection I would raise to the
21 question Your Honor is proffering.

22 THE COURT: Right. And what I'm saying
23 is, right now I'm not going to rule on
24 something that's not before me. I would
25 need to see the context, as I said earlier,

1 of the deposition in totality. I would need
2 to hear the other side's position as to the
3 objections, and to determine then whether or
4 not I believe that it would be appropriately
5 objectionable.

6 MR. SCAROLA: I understand that. The
7 problem I face is I didn't want to raise
8 objections that Your Honor already
9 overruled. I now understand Your Honor is
10 not overruling those objections. You want
11 to hear them in the context of the question
12 as phrased.

13 THE COURT: Correct. And that's what I
14 said earlier today, that while I recognize
15 objections may be raised, I am going to
16 allow at least the area of inquiry to be
17 delved into. And if there's objections then
18 I will deal with them.

19 But again, it's with the understanding
20 that the goose-versus-gander-type approach,
21 and that is that in order deal with these
22 issues head-on, there may be the necessity
23 to rule on these cases -- rule on these
24 matters that would not necessarily comport
25 with the traditional attorney-client,

1 work-product privileges that we would
2 otherwise deal with.

3 Take away attorney-client privilege.
4 That's really not what I intended to say.

5 What I intended to say is this is not
6 the traditional work-product privilege,
7 clearly. This is a different type of
8 situation and a different type of analysis
9 when we're now getting into issues of
10 malicious prosecution.

11 Because, again, if a factor in Epstein
12 bringing the case against Edwards at all was
13 what transpired in this federal lawsuit,
14 then the objections that Mr. Edwards may
15 make may not be beneficial to his position.

16 In other words, he's going to have to
17 make that strategic decision as to whether
18 or not these objections are sufficient to be
19 able to express his position. In other
20 words, whether it's worth making these
21 objections in order to be able to fully
22 engage and discuss and explain what he may
23 or may not have done.

24 MR. SCAROLA: We recognize we have the
25 same sword/shield problem that, at least at

1 some stages of this litigation, confront
2 Mr. Epstein. I understand those comments
3 and appreciate them.

4 I would only point out that to the
5 extent that claims are made in this
6 litigation about the abuse of process count
7 or in the other claims about, quote,
8 improper litigation tactics, those claims
9 fail as a matter of law.

10 The litigation privilege, as Your Honor
11 is well aware, is a complete and absolute
12 bar to an abuse of process claim. And it is
13 a complete and absolute bar to any claim
14 that relates to what occurred in the course
15 of litigation as opposed to the filing of
16 the litigation itself.

17 And I suggest that that's going to be a
18 very important distinction when Your Honor
19 comes to ruling upon whether these lines of
20 inquiry are relevant at all. Does it make
21 any difference what Bradley Edwards' motive
22 was, what his subjective thought processes
23 were in filing a motion in the context of a
24 pending case to require the posting of a
25 bond if requiring the posting of a bond

1 cannot possibly form the basis of a tort
2 claim because it is protected by absolute
3 immunity?

4 THE COURT: Only to the extent that
5 Epstein would have the ability to defend
6 himself as it relates to the elements of
7 malice or probable cause.

8 MR. SCAROLA: Yes, sir.

9 THE COURT: And that's where I am
10 finding a conundrum, and you articulated it
11 much better than I can.

12 And the sword versus shield doctrine is
13 a tough one here, because while I respect an
14 attorney's ability to protect his or her
15 mental impressions, strategies in ways of
16 going about a case, we have to really drill
17 down to what purpose does that privilege
18 serve.

19 We are not dealing with the direct,
20 normal everyday scenario that we see
21 plaintiff versus defendant and plaintiff
22 takes photographs of a given site that would
23 not be otherwise available to the defendant
24 except through some type of hardship. We
25 are not dealing with a one-on-one situation.

1 We are dealing with a one-off, so to speak,
2 and that is, the litigation itself has a
3 purpose. The mental impressions of an
4 attorney in the prosecution of that
5 underlying claim certainly must be
6 protected. And I'm not by any way, shape or
7 form suggesting it shouldn't be.

8 However, the area of inquiry that is
9 triggered is not so much in that case --
10 really has nothing to do with this anymore.
11 What it has to do with is whether or not
12 that was part of a defense that is asserted
13 by Epstein as it relates to his allege
14 malice, expressed or implied, and whether or
15 not it addresses the element of probable
16 cause and his defense to that element.

17 MR. SCAROLA: May I, at the risk of
18 arguing against myself, articulate what I
19 think the Court is saying, because I think I
20 agree with that decision?

21 While improper litigation tactics are
22 absolutely privileged and cannot form the
23 basis of an independent tort claim, engaging
24 in improper litigation tactics may be
25 circumstantial evidence that support

1 Mr. Epstein's assertion that Brad Edwards
2 knew that he was aiding in the Ponzi scheme.

3 THE COURT: I don't even think it has
4 to go that far.

5 MR. SCAROLA: Then I withdraw my
6 comment.

7 THE COURT: We are saying this with a
8 smile on our faces. I appreciate the bit of
9 levity.

10 More so what I'm saying is we don't
11 even have to get that far. It really just
12 goes to whether or not it is evidence. Does
13 it tend to prove or disprove a material
14 fact, therefore giving it relevancy to the
15 area of inquiry of the elements of a
16 malicious prosecution claim that must be
17 proven by Mr. Edwards that is equally
18 defensible by Mr. Epstein, and is equally
19 defensible in the eyes of the law? I don't
20 know what the facts are, but the eyes of the
21 law say he's entitle to his defense.

22 And this area of inquiry as it relates
23 to this federal litigation the \$14 million
24 bond, the limited information that he may or
25 may not have had regarding the whereabouts

1 of the files during the operative period of
2 Adler's and Rothstein's dealings, allegedly,
3 as it relates to Adler, clearly as it
4 relates to Rothstein by his own testimony as
5 to appease these investors and to further
6 his own Ponzi scheme.

7 Again, this is by no means suggesting
8 that Mr. Edwards had anything to do with
9 this. And believe me, I am not sitting
10 here -- because I don't know anything about
11 the investigation, other than what I've read
12 in the newspapers. And I try to stay away
13 from them as much as I could, particularly
14 when I remember still to this day -- and I
15 will share this everyone because I think you
16 should know.

17 I remember Mr. Edwards coming in after
18 this thing completely fell apart -- I knew
19 nothing about -- this is the Ponzi situation
20 with Rothstein when they raided offices --
21 he and William Berger came in and explained
22 this to me -- when I was handling those
23 other cases -- and that they would have to
24 switch and go to another firm, whatever the
25 case may be. So I remember that.

1 And again, not that it has anything to
2 do with the issue. I just thought about it
3 now, that they came in that day.

4 But the bottom line is it really comes
5 down to allowing Epstein to be able to
6 defend himself and defend the allegations,
7 even though there was a summary judgment on
8 the part of -- sorry. There was voluntary
9 dismissal on the eve of the summary
10 judgment.

11 He has the ability, in my view, to be
12 able to defend himself on the elements of
13 malice and proximate cause. So those are
14 the reasons why I'm allowing that testimony
15 to be had, subject to objection. I
16 understand and I am willing to accept that.

17 Now, on the issue of damages, I would
18 like to get into that briefly, if we could,
19 and find out whether or not we can get to
20 some common ground.

21 You said that there was one that was
22 answered?

23 MR. SCAROLA: I can tell Your Honor
24 that -- first of all, let me describe the
25 nature of the economic damage claim.

1 THE COURT: Sure.

2 MR. SCAROLA: We are not claiming lost
3 wages or lost earnings. What we are
4 claiming is the lost value of the time that
5 Mr. Edwards was obliged to devote to the
6 defense of the maliciously brought claims.

7 In that regard, we have provided to the
8 defense contemporaneous time records
9 reflecting the amount of time that
10 Mr. Edwards was obliged to devote to the
11 defense of those alleged-to-be-maliciously-
12 brought claims against him. That is the
13 extent of the economic damage claim.

14 We believe that we have fulfilled any
15 obligation that we have to provide discovery
16 with regard to that portion of the economic
17 aspect of the case by providing those
18 contemporaneous time records.

19 THE COURT: Hold on for just a minute.
20 Let's take them one step at a time.

21 Were you aware until today that
22 Mr. Edwards was not making a claim for loss
23 of earnings or loss of the capacity to earn?

24 MR. BREWER: No. No, because we talked
25 about injury. They are claiming injury to

1 his reputation.

2 THE COURT: Monetary damage.

3 That wasn't my question. Hold on.
4 Take it one step at a time. So we have
5 gotten somewhere.

6 Now we know there's not, for the
7 record, a claim for lost earnings or loss of
8 earning capacity. All right, so let's start
9 there.

10 MR. SCAROLA: Could I just qualify that
11 in one respect, Your Honor?

12 If we're talking about the loss of the
13 value of Mr. Epstein's time -- excuse me --
14 Mr. Edwards' time, that could be
15 characterized as a loss of earning capacity,
16 because if he's devoting time to the defense
17 of this case, he could not be devoting it to
18 some other legal pursuit.

19 However, that time could have been
20 taken away from this family. It could have
21 been taken away from vacation. It could
22 have been taken away from a lot of things.
23 We are not alleging that he lost business or
24 business opportunity, but he did lose the
25 value of the time that he was obliged to

1 devote to the defense of this case based
2 upon contemporaneous business records.

3 THE COURT: Okay, so while there's not
4 a formal claim for lost wages or loss of
5 earning capacity, there's a claim for the
6 lost value of time that Mr. Edwards had to
7 spend on the defense of this case?

8 MR. BREWER: I'm sorry. Is that the
9 only financial or economic damage claim?

10 THE COURT: We will go back to
11 Mr. Scarola.

12 MR. SCAROLA: Yes.

13 THE COURT: Okay. So there's no
14 medical issues, no psychiatric bills or
15 testimony that's expected, no psychological,
16 except for what I presume to be some type of
17 mental anguish claim he would have.

18 MR. SCAROLA: He will talk about mental
19 and emotional injury, distress, fear of
20 retribution. And those things are -- those
21 things are special damages that were laid
22 out in the complaint.

23 THE COURT: All right. So there are no
24 other economic damages that I am aware of as
25 related --

1 MR. BREWER: He's claiming injury to
2 his reputation as an economic damage.

3 THE COURT: Well, I'm not certain it
4 is.

5 MR. BREWER: I think it is, Your Honor.
6 How is it going to be expressed?

7 THE COURT: That's a good question.

8 MR. BREWER: It's going to be expressed
9 in dollars.

10 THE COURT: I understand that. So is a
11 recommended amount for pain and suffering in
12 a generic BI claim.

13 But, again, we have to look at this
14 from the standpoint of lost -- you said
15 lost --

16 MR. SCAROLA: Injury to reputation.

17 THE COURT: Loss of injury to his
18 reputation.

19 MR. SCAROLA: Yes, sir.

20 Quite frankly, this is analogous to a
21 defamation per se claim. That is, if
22 someone is attacked with regard to the
23 performance of their professional
24 responsibilities, of their capacity to
25 perform in an ethical and honest manner,

1 then damages are presumed, without the
2 necessity for the specific loss.

3 THE COURT: I am not going to get in
4 Mr. Scarola's thought process, which is a
5 precise example of what I was trying to
6 delineate earlier --

7 MR. SCAROLA: And clearly I am
8 harassed.

9 THE COURT: -- between the direct claim
10 and now what I call the one-off claim,
11 without meaning any disrespect to anyone
12 here. But it was just a way of trying to
13 describe the difference.

14 Now, again, I'm not telling you what
15 you can ask specifically. But I'm saying
16 now that there is an area of inquiry that's
17 opened up here with regard to both his claim
18 of loss of value of time and the issue of
19 loss of reputation -- or the tarnishing of
20 his reputation. Those are questions that
21 can be gotten into with Mr. Edwards.

22 MR. SCAROLA: And have. We understand
23 that that's an appropriate area of inquiry
24 to the extent that it has not already been
25 the subject of inquiry.

1 THE WITNESS: Again, let the record be
2 clear. I am exercising my discretion, which
3 I understand to be relatively broad,
4 certainly not without at least some
5 harnessing, but certainly to the extent that
6 I'm exercising what I perceive to be under
7 the case law a broad discretion in the area
8 of discovery. The exercise of this
9 discretion is consistent with the fact that
10 the cases have been filed in 2009. We are
11 now in 2017.

12 There was a lengthy appellate process
13 that transpired. The case went all the way
14 up to the supreme court on the very issue
15 that is going to be tried. And counsel for
16 both sides have worked very hard in
17 preparing the motions that would be heard
18 today and that still need -- some still need
19 to be heard. I look forward to sufficient
20 time in order to that.

21 But the reason for the allowance of
22 Mr. Edwards to be redeposed and essentially
23 to start again is because my review of the
24 deposition excerpts are such that a cogent
25 deposition was not taken. I'm not blaming

1 anyone for that.

2 But certainly even just the passage of
3 time in doing this, again, for as long as I
4 have is significant from the standpoint of
5 what is relevant today versus what may have
6 been relevant in 2010-2013, respectfully.

7 And the exercise of that discretion is
8 to assure ourselves that only that area of
9 inquiry that is relevant today, now that the
10 Epstein claim has been voluntarily
11 dismissed, there really are no other pending
12 live claims, except for Mr. Edwards'
13 malicious prosecution claim against Epstein
14 is a significant reason for my allowance of
15 this deposition to go forward.

16 So anything else on damages that are
17 going to be needed to be looked into?

18 MS. HADDAD COLEMAN: Yes, Judge. I
19 would like to speak to the two areas about
20 which Mr. Scarola just stated were the
21 damages being claimed by Mr. Edwards.

22 It is of great concern that he's
23 seeking punitive damages in this case.
24 Clearly, my client has the right to explore
25 what the monetary damages suffered as

1 alleged by Mr. Edwards are, as well as his
2 potential exposure. That's the best way to
3 evaluate a case, and is something to which I
4 speak about with my client.

5 However, with respect to the first
6 instance of damages that Mr. Scarola
7 mentioned -- the cost to defending against
8 Epstein's case, the time away from his
9 practice or his family or whomever should be
10 answered in these allegations -- he has
11 hired Mr. Scarola from the outset. What I'm
12 saying is, when we ask questions about his
13 time records or his work on cases or his
14 legal practice or his vacations during the
15 relevant time period and we get an
16 objection, I want to know what that means.
17 What are we allowed to ask him about that?

18 And, Judge, with respect to the injury
19 to his reputation -- Mr. Scarola just said
20 his defamation, per se -- well, that's part
21 of the litigation privilege. You don't get
22 damages for defamation, per se. It all
23 occurs during the course of litigation.

24 So what does injury to his reputation
25 mean? How do we quantify that? By his

1 work?

2 THE COURT: These sound like motions,
3 potentially, for partial summary judgment.
4 All I'm trying to do here today is trying to
5 reach at least some reasonable confines of a
6 deposition that probably needs to be taken
7 in the next 30 days. I am going to
8 authorize it be taken within the next 30
9 days.

10 And I'm giving you a broad scope of
11 where I believe the testimony should be
12 focused. I am not trying to give anybody
13 hints. I'm not trying to give anybody help.
14 I'm not trying to direct anything other than
15 to exercise the discretion that I've already
16 indicated on the record to ensure that we
17 are going to least have what I hope to be a
18 deposition that is going to focus on the
19 areas that need to be focused on based upon
20 what is currently before the court, and that
21 is, the singular count of malicious
22 prosecution by Edwards against Epstein, and
23 the general areas that I have seen by way of
24 the significant amount of materials that I
25 have read and the arguments that you have

1 been kind enough to present to me on both
2 sides that I perceive to be areas of
3 appropriate inquiry.

4 Whether it's met with objection or not,
5 well, I will deal with that at another time,
6 okay? But I can't presuppose anything that
7 is not before me at this stage of the
8 proceeding. And really, it's against all
9 known rules for me to rule on something that
10 is not before the Court.

11 Again, part of the process of being the
12 trial judge is trying to work out at least
13 some meaningful areas of compromise without
14 being a mediator, but trying to at least
15 move this case forward, as it is my
16 obligation under the rules of judicial
17 administration. And that's what I'm trying
18 to accomplish today in large part.

19 So I don't want to get into right now,
20 well, what specifically can we ask? That
21 may be limited, that may be not appropriate,
22 that may not be legally an appropriate part
23 of the damages.

24 If it's not a legally appropriate part
25 of the damages then you can raise it by way

1 of a motion for partial summary judgment,
2 motion for pleading -- judgment on a
3 pleading, something along those lines. But
4 I am not here to make those types of
5 decisions now.

6 So let's give it a shot. Let's see
7 where you guys can end up. And essentially
8 what I am doing as well, for the reasons
9 that are stated on the record, I'm denying
10 Epstein's motion to overrule the objections
11 and compel Mr. Edwards to answer questions,
12 except for those that I have specifically
13 stated today on the record.

14 The vast majority of these questions
15 that have been brought to my attention --
16 again, I recognize that I may be taking some
17 out of context -- but what I would
18 respectfully suggest are complete and
19 entirely irrelevant from a discovery
20 perspective.

21 And I have today on several occasions
22 differentiated between reasonable bounds of
23 discovery recognizing the broad nature of
24 discovery versus admissibility for finding,
25 nevertheless, that these matters touch on

1 areas that are of no relevance to what we
2 are dealing with in this singular claim.

3 MR. SCAROLA: Your Honor, with a view
4 towards anticipating procedural issues and
5 going back to my concern about wanting to
6 complete Mr. Epstein's deposition or
7 discovery before we are providing him
8 additional information, there are three
9 things that I want to mention.

10 Mr. Epstein has listed two of his prior
11 attorneys on his witness list. And I have
12 been attempting now for many days through
13 many email communications to find out
14 whether it is Mr. Epstein's intension to
15 waive attorney-client privilege in an
16 attempt to rely upon some kind of advice of
17 counsel defense.

18 THE COURT: Would you tell me who those
19 attorneys are, please?

20 MR. SCAROLA: Mr. Roy Black is one, and
21 I think Mr. Goldberger was another.

22 MR. GOLDBERGER: Yes, Mr. Goldberger is
23 one of them. Mr. Critton is one and
24 Mr. Akerman.

25 MR. SCAROLA: Mr. Critton and

1 Mr. Akerman. I'm sorry. There's a bunch of
2 them.

3 THE COURT: Who are the ones that are
4 actually listed?

5 MS. HADDAD COLEMAN: On the witness
6 list, Judge, are Mr. Critton, Mr. Black --
7 and the reason -- because you made us answer
8 why we were listing people in the summary of
9 the testimony -- says that they will be
10 called in rebuttal, if necessary, to testify
11 as to the facts known to Mr. Epstein at time
12 he filed suit, because Mr. Critton filed the
13 suit.

14 MR. SCAROLA: And that listing of
15 witnesses and descriptions of their
16 testimony clearly indicates an intent to
17 waive attorney-client privilege.

18 Obviously, neither Mr. Critton nor
19 Mr. Black nor any other of Mr. Epstein's
20 lawyers can testify about what Mr. Epstein
21 knew, except based upon what Mr. Epstein
22 told them.

23 And an advice of counsel defense fails
24 as a matter of law unless a full and
25 complete disclosure is made to the lawyers.

1 And Mr. Epstein cannot selectively
2 waive attorney-client privilege. He can't
3 say I'm going to waive attorney-client
4 privilege with regard to what I told Robert
5 Critton and Roy Black, but I'm not going to
6 let you inquire as to what I was telling all
7 my other lawyers at the same time if the
8 issue is what did Mr. Epstein know.

9 So I have asked very directly in at
10 least five email communications -- and I
11 would be happy to provide you with copies of
12 each of them -- please tell me whether there
13 is an intent to waive attorney-client
14 privilege, because if there is, I need to
15 take all of these depositions. And if there
16 is not, I don't need to take any of them,
17 because they will not be able to testify,
18 unless there's a waiver of attorney-client
19 privilege.

20 I filed notices to produce from
21 non-parties for the files of all of these
22 attorneys, to which there has been an
23 objection. I have noticed their
24 depositions, and I have served them with
25 subpoenas to be deposed.

1 At the time that I served them with
2 those subpoenas, I sent letters out to all
3 of them copying opposing counsel, saying I
4 am setting these because we are dealing with
5 a trial that is set already on the trial
6 calendar and I need to take this discovery.

7 If the dates are inconvenient for you,
8 or if there's not going to be a waiver of
9 attorney-client privilege, please let me
10 know. And nobody is responding to those
11 direct inquiries.

12 I do not know, as I stand here today,
13 whether attorney-client privilege is going
14 to be asserted or it's going to be waived.

15 THE COURT: It seems to be a bit
16 difficult to assert attorney-client
17 privilege when two attorneys are listed as
18 witnesses.

19 MR. SCAROLA: That's exactly my point,
20 Your Honor. And that's why I have asked for
21 that clarification. I don't know how they
22 can call these witnesses. And the only
23 thing I have gotten from Ms. Haddad Coleman
24 is these are listed as rebuttal witnesses.

25 Well, I don't care whether they are

1 rebuttal witnesses or witnesses that you are
2 calling for any other purpose. If you
3 intend to rely on their testimony for
4 purposes as described in your disclosure to
5 the court, that cannot be done without a
6 waiver. Is that what you are telling me you
7 are doing? And they refuse to answer that
8 question.

9 So I would ask that the Court pose that
10 question to them right now and that we get
11 an answer on the record as to whether that
12 is going to happen so I know whether this is
13 discovery that I need to proceed with.

14 THE COURT: Binger has long held,
15 essentially, that there's really no
16 difference from the discovery standpoint
17 between rebuttal witnesses or rebuttal
18 evidence and direct evidence of witnesses in
19 chief.

20 Mr. Brewer, your position?

21 MR. BREWER: I have been dying to
22 speak, Your Honor.

23 THE COURT: Go right ahead.

24 MR. BREWER: First of all, advice of
25 counsel is a defense. It is an affirmative

1 defense. And it is an affirmative defense
2 which has not been raised by Mr. Epstein.
3 Period. End of story.

4 MR. SCAROLA: Then are we removing
5 those two witnesses from the witness list
6 and the description that they are going to
7 testify as to Mr. Epstein's knowledge at the
8 time of the filing?

9 MR. BREWER: I didn't interrupt him at
10 any time.

11 THE COURT: That's fair.

12 Go ahead Mr. Brewer.

13 MR. BREWER: With regard to the two
14 witnesses listed, it is true that they are
15 listed as rebuttal witnesses. They can
16 testify about things that are not
17 attorney-client privileged.

18 In other words, they can testify --
19 just say Mr. Edwards decides to -- just to
20 take some hypothetical -- in his case in
21 chief decides to say, You know what, I
22 wasn't involved with regard to that federal
23 case that was filed. That had an electronic
24 signature on it. It wasn't me. I didn't do
25 it. Scott Rothstein did it. They would

1 have knowledge of what transpired in the
2 case that they could give rebuttal testimony
3 on without waiving any kind of
4 attorney-client privilege.

5 Now, we get to a conundrum that, again,
6 is being posed -- and this is going to come
7 up before you, Your Honor, on the motion for
8 stay -- and that conundrum is, Mr. Epstein
9 is -- because of that Crime-Victims' Right
10 Act is still potentially in jeopardy for
11 prosecution, because they have purposely --
12 and Mr. Edwards and an attorney by the name
13 of Cassel, I believe, have prosecuted that.
14 It is still going on. And they control at
15 least their side of that litigation. And it
16 is because of that that Mr. Epstein must
17 continually, unfortunately, plead the Fifth.

18 And so we have got Mr. Edwards
19 controlling both sides, essentially, that we
20 are now looking at. And I'm bringing that
21 up -- but it's going to be brought up in
22 front of Your Honor because it's a
23 conundrum.

24 I cannot, as I sit here today --
25 because this issue -- while there have been

1 emails back and forth between counsel as to
2 whether or not these people are going to be
3 listed or not, I can't tell you, because I
4 have not had an opportunity to speak with
5 Mr. Epstein about these issues. And, in
6 fact, these issues just came up. And
7 there's no motion before the Court. They
8 have not been briefed in any shape, form or
9 fashion. And therefore, we really are not
10 willing to respond today from the standpoint
11 of, Yes, we are going to blanket-waive
12 attorney-client privilege. I can't make
13 that assertion to the Court, or that we are
14 not going to one way or the other.

15 MR. SCAROLA: Your Honor, respectfully,
16 the issues were directly raised in a motion
17 that we filed to strike Mr. Epstein's
18 affidavit and to preclude presentation of
19 any testimony or evidence as to which
20 discovery was foreclosed on the assertion of
21 the Fifth Amendment privilege and by
22 assertion of the attorney-client privilege.

23 So that motion was timely filed. That
24 motion is before the Court. Although, Your
25 Honor has decided not yet to hear it, that

1 motion was filed.

2 And one of the reasons it was filed is
3 because these two witnesses were listed and
4 the description was provided of their
5 testimony. And it wasn't rebuttal in case
6 Bradley Edwards decided to disclaim
7 knowledge of the federal case. The listing
8 was knowledge with regard to what
9 Mr. Epstein knew and relied upon at the time
10 of the filing. That is an advice of counsel
11 defense which has never been raised.

12 It is an affirmative defense that is
13 required to be asserted. They didn't assert
14 it. They've listed these two witnesses and
15 described testimony that is only relevant
16 with regard to an advice of counsel defense.
17 And when I tried to get an answer as to
18 whether that's what they're trying to go do
19 indirectly, they ignore me. They refuse to
20 answer those questions.

21 I don't want to depose Roy Black or any
22 of the other five lawyers that I have set
23 for deposition if there's going to be no
24 waiver of attorney-client privilege, because
25 I will waste my time. They will

1 appropriately assert attorney-client
2 privilege. And I don't need to do that. We
3 have got other productive things that we
4 need to do.

5 I don't need to redeposed Mr. Epstein
6 in advance of Mr. Edwards, being if,
7 Mr. Epstein is going to continue to assert
8 his Fifth Amendment privilege.

9 THE COURT: Mr. Brewer has already
10 indicated that will be the case.

11 MR. SCAROLA: If that's the case,
12 that's fine. I don't need to take his
13 deposition again. He's asserted the Fifth
14 Amendment privilege consistently, broadly,
15 and foreclosed discovery with regard to the
16 matters that are the central focus of this
17 case. And we are fine with that record as
18 it stands.

19 THE COURT: So what are you asking me
20 to do today on this issue?

21 MR. SCAROLA: I have gotten, I think,
22 what I needed, and that was an assertion
23 that there will be no advice of counsel
24 defense raised and no waiver of
25 attorney-client privilege.

1 THE COURT: At this point in time, as I
2 understand it, Mr. Epstein continues to
3 assert and will continue to assert his Fifth
4 Amendment privilege based upon the Victims'
5 Right case that's currently pending in
6 federal court.

7 MR. SCAROLA: And attorney-client
8 privilege.

9 THE COURT: If I didn't say that, I
10 meant to.

11 MR. SCAROLA: You didn't. And I just
12 want to be sure that that's our mutual
13 understanding of where we stand procedurally
14 right now.

15 THE COURT: I listed privileges, and
16 whatever is associated privilege -- I didn't
17 say attorney-client privilege. Presumably
18 that's also going to be --

19 MR. BREWER: You are asking me to look
20 into a crystal ball right there, Your Honor.
21 I can say that --

22 THE COURT: Join the club.

23 MR. BREWER: I can say that because of
24 the incendiary case, he has to pled the
25 Fifth to certain questions which deal with

1 purported criminal activity.

2 THE COURT: Well, my understanding is
3 that anything of a substantive nature it
4 gets into, any of the areas that have
5 already been previously inquired into would
6 be privileged as it relates to the Fifth
7 Amendment and the assorted other amendments
8 that he has stood upon will continue to be
9 asserted. And presumably the
10 attorney-client privilege also?

11 MR. GOLDBERGER: Subject to
12 consultation with our client, obviously,
13 Judge.

14 THE COURT: But it sounds like it will
15 be. I am going to accept that as a yes.

16 MR. SCAROLA: Thank you, sir.

17 And the one last procedural matter that
18 I want to raise is [REDACTED] is one
19 of the three clients that Bradley Edwards
20 represented. One of the three cases that
21 was settled. And [REDACTED] [REDACTED] -- at the
22 request of opposing counsel, and with the
23 agreement that Mr. Epstein would pay for her
24 transportation -- traveled from Australia to
25 New York in order to be available to be

1 deposed on Friday. She is here. She is
2 ready to be deposed.

3 THE WITNESS: Here in Florida or New
4 York?

5 MR. SCAROLA: She's in New York. The
6 agreement was that she would be deposed in
7 New York. That's where they wanted her to
8 be deposed. She flew to New York, is there
9 and ready to be deposed on Friday. We are
10 ready to defend against that deposition on
11 Friday.

12 Our position will be that if they don't
13 choose to take that deposition now in light
14 of those circumstances, they will have
15 foregone any opportunity to depose [REDACTED]
16 [REDACTED], who has already given sworn
17 testimony on multiple occasions.

18 THE COURT: I don't know who [REDACTED]
19 [REDACTED] is, so --

20 MR. SCAROLA: One of the three --

21 THE COURT: You said that. One of the
22 three people Mr. Edwards represented.

23 MS. HADDAD COLEMAN: Judge, I would
24 like to speak to that. First of all,
25 Mr. Edwards did not represent [REDACTED]

1 [REDACTED] at the time in any case against
2 Mr. Epstein. That isn't true.

3 Second point --

4 MR. SCAROLA: I apologize. That is a
5 mistake. Yes.

6 MS. HADDAD COLEMAN: Second, she's
7 never given any testimony in this case,
8 whether in Mr. Epstein's case in chief
9 against Mr. Edwards or conversely.

10 Number three, we were told when they
11 listed Ms. Roberts as a witness, to
12 coordinate with Mr. Edwards. I was then
13 told to coordinate with an attorney in New
14 York.

15 Basically the long and short of it is I
16 spent two months trying to coordinate dates
17 with a woman who lives in Australia, two
18 different attorneys. The date was set; she
19 was coming to New York. Then I got an email
20 she had liposuction, has to wear a girdle,
21 and cannot fly from Australia, as she needs
22 assistance to put on her girdle on the
23 airplane.

24 So then we say we are not going to pay
25 for a companion to fly to New York, and we

1 don't want the liability if she has a blood
2 clot. Australia is far away. So we get a
3 note from her doctor, not to say that she
4 can fly, but that she needs a companion.

5 Then, last week I got -- I'm sorry --
6 two weeks ago -- maybe it was last week -- I
7 got an email from yet another attorney
8 telling me that Ms. Roberts will only be
9 produced to testify if we get an order that
10 all of her testimony is confidential and
11 it's under seal.

12 Why am I going to waste the time and
13 money to present her if all of her testimony
14 is going to be confidential and under seal,
15 especially if Mr. Edwards plans on calling
16 her to testify? So I explained in an email
17 that we are not okay with that so we are not
18 going to depose her. We will set it off
19 until such time that we can work it out
20 before the court.

21 THE COURT: At whose expense is she
22 flown?

23 MS. HADDAD COLEMAN: Ours, Judge.

24 And then --

25 MR. SCAROLA: I'm sorry. I don't think

1 you paid yet.

2 MS. HADDAD COLEMAN: Well, we had
3 agreed to --

4 MR. SCAROLA: It's at her expense as of
5 right now, but they agreed that they would
6 pay for her expenses. And when they
7 objected to confidentiality of the
8 transcript until it was released by order of
9 the court, within less than two hours that
10 request was withdrawn and we were told --
11 they were told that we are ready to proceed
12 with the deposition without confidentiality,
13 to which we got a response, I'm sorry, we
14 are no longer available.

15 MS. HADDAD COLEMAN: No, Judge, What
16 happen was, the lawyer responded in a
17 lawyer-like fashion, "I understand your
18 position." There was no affirmative
19 statement whatsoever that they will withdraw
20 the confidentiality or anything of that
21 nature. And we wrote back clearly and
22 unequivocally we are putting this off until
23 we can get it before the court. Do not come
24 to this deposition. It is canceled. Done.
25 That was the end of the conversation, Judge.

1 There was no expressed waiver of
2 confidentiality. It said, I understand your
3 position.

4 THE COURT: Who set the deposition?

5 MS. HADDAD COLEMAN: It was never
6 noticed, Judge. There's no notice of
7 deposition right now.

8 MR. SCAROLA: She was appearing
9 voluntarily at the defense's request on the
10 date and at the place chosen by the defense.

11 MS. HADDAD COLEMAN: And, Judge, we
12 told them that it wasn't going forward. So
13 if she's in New York, it's not pursuant to
14 the subpoena, nor are we in agreement at
15 this point, because we said it wasn't
16 happening.

17 THE COURT: I hate to see these things
18 happen, because it erodes my faith and
19 confidence in the bar. And anytime that's
20 done, it's a sad day. I don't like to see
21 things occur like this, especially where
22 there's somebody who came from Australia to
23 New York with the expressed purpose of being
24 deposed, and is now no longer being subject
25 to deposition.

1 With that said, however, the problem is
2 that, if there was no notice of taking a
3 deposition, if there was no subpoena for her
4 presence and she showed up voluntarily, as a
5 non-party she's entitled to reimbursement of
6 her expenses.

7 But I am not certain that I really can
8 do anything, and I am not going to do
9 anything at this stage to compel her
10 deposition testimony absent some type of
11 iron-clad agreement that I can look at that
12 says that she's going to be deposed on
13 Friday in New York City.

14 If it was equivocal, if it was with
15 conditions, if it was not set forth and cast
16 in stone, then I'm reluctant to do anything
17 other than to say that, again, I'm sorry.
18 These things happen. I'm sorry that we
19 can't move forward.

20 But without the notice and/or subpoena
21 of the witness, without anything other than
22 this back and forth of conditions
23 attributable to the taking of the deposition
24 and nothing, as I said, cast in stone, and
25 without authority, as far as the Court is

1 concerned to do anything to compel the
2 deposition on Friday.

3 MR. SCAROLA: Thank you, sir.

4 MR. GOLDBERGER: Your Honor, pursuant
5 to your request earlier this morning, I've
6 given you a -- provided you a copy of the
7 motion. I'm sure Mr. Scarola has many
8 copies, but I provided him another copy.

9 THE COURT: I will just keep this.

10 What I'm going to do is, on motions,
11 such as discovery motions -- since I have
12 gotten so much background today -- if there
13 are motions that can be handled reasonably
14 at 8:45, I would ask that you go ahead set
15 them at that time.

16 MR. SCAROLA: One per day?

17 THE COURT: One per day, if you don't
18 mind. I am not trying to be facetious. I
19 have to be consistent in the way I treat
20 everybody. And since all are subject to
21 that one-per-day rule -- for good reason.
22 The motion calendars have become very, very
23 heavy. There are many who try to set case
24 matters that are really not appropriate for
25 the motion calendar.

1 I typically allow it to be done because
2 I do read the materials in advance. So if I
3 have it, I can usually digest it to where I
4 can cut down on the time that's necessary to
5 spend to argue and not keep everybody else.

6 MR. SCAROLA: My review of those
7 additional motions, Your Honor, indicates
8 that we probably need to deal directly with
9 the Fifth Amendment privilege issues before
10 we proceed with any further discovery
11 discussions, including the one motion that
12 we will definitely not be able to handle on
13 an 8:45, and that is the motion in limine,
14 the omnibus motion in limine.

15 THE COURT: So you are working right
16 now, Ms. Haddad, on what?

17 MS. HADDAD COLEMAN COLEMAN: Judge,
18 that's what I was going to ask you, on my
19 response to Mr. Scarola's motion to strike
20 the affidavit, even though you said that was
21 moot.

22 THE COURT: What I meant to say was the
23 affidavit and being stricken in conjunction
24 with my consideration of the motion for
25 summary judgment made that aspect of it

1 moot. So I should have been a little more
2 clear.

3 But what I was trying to get to is how
4 much time you think you're going to need to
5 get your response in. And then I have
6 offered Mr. Scarola the opportunity to file
7 a reply to that.

8 MS. HADDAD COLEMAN: This is -- just to
9 be specific, this is to his motion to strike
10 the affidavit in the Fifth Amendment motion?

11 THE COURT: Off the record for a
12 second.

13 (A discussion was held off the record.)

14 THE COURT: Back on the record.

15 MS. HADDAD COLEMAN COLEMAN: Judge, I
16 believe I can have a response -- today is
17 Tuesday?

18 THE COURT: Yes.

19 MS. HADDAD COLEMAN: Judge, if I could
20 have until next Friday to get it filed, I
21 believe I can fully brief the issue. Is
22 that acceptable?

23 THE COURT: How much time after that
24 Mr. Scarola, would you like to get your
25 reply? I would suspect a week would be

1 enough time.

2 MR. SCAROLA: I am just checking dates,
3 Your Honor. I'm sorry.

4 THE COURT: What I'm conceptualizing is
5 trying to set the hearing sometime between,
6 like, the 23rd of October and the 3rd of
7 November.

8 MR. SCAROLA: That part is a problem.
9 Between the 20th of October and the 3rd of
10 November, I'm in Africa.

11 I'm sorry, was the suggestion that the
12 reply be filed by the 13th of October?

13 THE COURT: Yes. Not the --

14 MR. SCAROLA: I'm sorry. The response.

15 THE COURT: The response.

16 MR. SCAROLA: The response be filed by
17 the 13th of October. We can have our reply
18 filed by the 20th of October, Your Honor.

19 THE COURT: If that's okay, because,
20 again, the timing was solely to try to fit
21 you in and give you a reasonable amount of
22 time between the 23rd of October the 3rd of
23 November so that I can keep this moving.

24 But if you're away -- I knowing having
25 all the lawyers here, your vacations are

1 well deserved. I am not going to compromise
2 that by any means.

3 MR. SCAROLA: I will actually be
4 representing a herd of elephants, sir. It's
5 a business trip.

6 THE COURT: Off the record.

7 (A discussion was held off the record.)

8 MR. SCAROLA: I don't have any problem
9 with the 20th. We will get it in by the
10 20th. I would prefer to be here for the
11 hearing.

12 THE COURT: That's why I'm saying I'm
13 certainly not going to compromise your
14 vacation to require you to be here.

15 I don't know what your schedule looks
16 like during the earlier part of November,
17 other than I'm sure you're going to be in a
18 jam with others that are going to be
19 demanding your time.

20 I will see what I have available right
21 now. I don't know -- it's going to be the
22 end -- nearing the end of the docket that we
23 are now on, so that usually means a busy
24 time.

25 But what we will do is this. What I

1 would like you to do is come in during the
2 week of October 16th at an 8:45 and give me
3 a better idea of availability. I will
4 have -- once you notify me -- and give us a
5 heads-up at my office, you can have your
6 assistant, Mr. Scarola, contact Denise and
7 give her a heads-up when you're coming in so
8 that we can also prepare and give you some
9 type of time.

10 You get back, you said, on the 3rd?

11 MR. SCAROLA: Yes, sir.

12 THE COURT: So we can give you some
13 time as well. We can start contemplating
14 what's available during --

15 MR. SCAROLA: Your Honor, I can make it
16 work towards the end of that following week,
17 the week of November 6th, Wednesday,
18 Thursday or Friday. I can move things
19 around to be available to Your Honor if
20 those times work for the Court.

21 MS. HADDAD COLEMAN: I am not in town.
22 I leave Thursday the 4th of November. I
23 have a notice of unavailability filed,
24 Judge. I leave -- I am gone that Thursday
25 and Friday. But I can come Wednesday if

1 that works.

2 THE COURT: Well, you said the 3rd and
3 4th. That's Friday and Saturday.

4 Mr. Scarola, I think, is suggesting the
5 8th, 9th and 10th.

6 MR. GOLDBERGER: The 10th is a court
7 holiday, Your Honor. It's Veteran's Day.

8 MS. HADDAD COLEMAN: Let me look at my
9 book. Maybe we can set the date now.

10 Do you mind if I have my phone out,
11 Judge?

12 THE COURT: I don't have November 10th
13 as a holiday.

14 MR. GOLDBERGER: My assistant told me
15 it's a holiday.

16 THE COURT: You're right. I guess
17 because Veteran's Day is actually the 11th,
18 the observation is the 10th, so that's
19 correct.

20 The calendar doesn't show a holiday,
21 but my official court calendar does, so I
22 apologize.

23 So the 9th and the 10th, I guess -- I'm
24 sorry, the 8th or the 9th is what we are
25 looking at. I don't know where I am. I

1 have no idea. I am just throwing that out
2 there.

3 MR. SCAROLA: Should we just contact
4 your JA about coordinating something, Your
5 Honor?

6 THE COURT: Well, again what I would
7 like you to do is come in at an 8:45 in a
8 couple of weeks, let's say on October 19th
9 or something -- the 18th or 19th. And that
10 way I can give you a better idea of
11 availability once I have that opportunity to
12 do so.

13 Denise is back, but she had -- most of
14 her day was jury duty.

15 MR. SCAROLA: May we also discuss the
16 motion -- the setting of the motion for
17 temporary stay of proceedings?

18 MR. GOLDBERGER: That's what I was just
19 going to bring up. That's going to be
20 e-filed this evening.

21 MR. SCAROLA: We've actually been
22 handed a copy, and we've been told that it
23 has been filed. We have just received it,
24 but we now have it.

25 THE COURT: Let me look at the 13th of

1 October -- we mentioned that date originally
2 for some other reason today. That may be
3 time that I may have.

4 I know there's a one-day hearing or
5 trial. I think it's on that day. And we
6 may have already filled it, because I've
7 been using it quite a bit lately.

8 MR. GOLDBERGER: Judge, you're not
9 going to believe this, but in my new role as
10 a traffic hearing officer, I am the bencher
11 on duty on the afternoon of the 13th. I am
12 available in the morning.

13 THE COURT: Well, let me see what's
14 available. But I know that when we had
15 calendar call I set aside a day, in an
16 abundance of caution, for a case. But
17 again, I know that I have offered it to
18 others, so it might be taken.

19 MR. GOLDBERGER: I know everyone is
20 trying to get out of here, but just a last
21 matter. You ordered us to take Mr. Edwards'
22 depo within 30 days. We now know that Mr.
23 Scarola is going to be chasing elephant
24 herds and prides of lions in Africa for the
25 first portion of that. That kinds of

1 shortens our window of opportunity of doing
2 that deposition, unless he has someone else
3 that can sit in for the depo.

4 MR. SCAROLA: I probably do.

5 MR. GOLDBERGER: Great. Okay.

6 THE COURT: Again, I want the record to
7 be clear that, in a case of this type and
8 magnitude -- usually I hold consistent no
9 matter what the case -- but certainly I'm
10 not seeking to compromise anyone's vacation
11 time. They're well deserved. I don't want
12 to put anybody in any form of awkward
13 position simply to accommodate the Court's
14 deadlines.

15 MR. GOLDBERGER: We will see what we
16 can work out with Mr. Scarola's office on
17 that.

18 Thank you, Judge.

19 THE COURT: I am going to keep these
20 materials for now. But what I am going to
21 ask you to do is, anytime there's a
22 resetting of a matter, would you kindly
23 forward to me a courtesy copy and not depend
24 on the amount of stuff that I have?

25 Okay, thank you.

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(The above proceedings were
concluded at 4:43 p.m.)

COURT CERTIFICATE

STATE OF FLORIDA)
 : SS
COUNTY OF PALM BEACH)

I, SONJA D. HALL, certify that I was
authorized to and did stenographically report the
foregoing proceedings and that the transcript is a
true record of my stenographic notes.

Dated this 9th day of October 2017.

SONJA D. HALL