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

Case No. 502009CA040800XXXXMB

JEFFREY EPSTEIN,  
Plaintiff/Counter-Defendant,  
vs.  
SCOTT ROTHSTEIN, individually;  
BRADLEY EDWARDS, individually,  
  
Defendants/Counter-Plaintiffs.

TRANSCRIPT OF PROCEEDINGS

DATE TAKEN: Thursday, March 8th, 2018  
TIME: 1:30 p.m. - 4:50 p.m.  
PLACE: 205 N. Dixie Highway, Room 10D  
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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1 APPEARANCES:  
2 For Plaintiff/Counter-Defendant:  
3 LINK & ROCKENBACH, P.A.  
4 [REDACTED]  
5 By KARA BERARD ROCKENBACH, ESQUIRE  
6 By SCOTT J. LINK, ESQUIRE  
7 For Defendant/Counter-Plaintiff:  
8 SEARCY, DENNEY, SCAROLA, BARNHART &  
9 SHIPLEY, P.A.  
10 [REDACTED]  
11 By JACK SCAROLA, ESQUIRE  
12 By DAVID P. VITALE JR., ESQUIRE  
13 By KAREN TERRY, ESQUIRE  
14  
15 For Non-Parties L.M., E.W. & Jane Doe  
16 HATCH, JAMES & DODGE, P.C.  
17 [REDACTED] te 1400  
18 By PAUL G. CASSELL, ESQUIRE  
19  
20 For Jeffrey Epstein:  
21 ATTERBURY, GOLDBERGER & WEISS, P.A.  
22 [REDACTED]  
23 By JACK A. GOLDBERGER, ESQUIRE  
24  
25

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P R O C E E D I N G S

- - -

1 THE COURT: Thank you. Welcome back  
2  
3 everybody. Have a seat.  
4  
5 MR. SCAROLA: May I move to this podium now?  
6  
7 THE COURT: Sure.  
8  
9 MR. SCAROLA: Thank you, sir.  
10  
11 Your Honor, have we decided what motions we're  
12 going to hear?  
13  
14 THE COURT: Yes. My understanding as I left  
15 was going to be Edwards' Second Supplement to  
16 Motion in Limine Addressing Scope of Admissible  
17 Evidence, and of course in that same vein Epstein's  
18 Notice of Service of Unredacted Appendix in  
19 Support -- or Response in Opposition to Edwards'  
20 Second Supplemental Motion in Limine addressing  
21 Scope of Admissible Evidence.  
22  
23 MR. SCAROLA: Your Honor, there are actually  
24 multiple submissions to the Court to deal with  
25 closely-related issues, and those issues arise out  
of the fact that over the course of the last three  
weeks 724 new exhibits have been added to the  
exhibit list of the defendant Epstein.

And just to provide some general background,  
some of which your Honor may recall, there was an

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exhibit list filed by Mr. Epstein on November 16,  
2017. That same exhibit list was attached to the  
pretrial stipulation on December 22, 2017. And  
then for the first time on March 5th of 2018 the  
new exhibit list was filed. If you compare the  
exhibit lists of November 16th and December 22nd,  
which, as I said, are the same, with the March 5th  
exhibit list, 25 new exhibits -- excuse me -- 724  
new exhibits were added.

Your Honor held a hearing in this matter on  
December 5th and made it clear to all parties that  
exhibits that were not disclosed by the end of  
December -- and I think it may have been the  
December 22 date -- I'm not sure about that exact  
date -- but exhibits that were not specifically  
disclosed would not be permitted to be used at  
trial. You made it clear that catchall listings  
would be unacceptable; that specific individual  
exhibits needed to be listed. I'm sure your Honor  
has a recollection of those circumstances. And  
that, obviously, is a fairly standard order that  
your Honor adheres to in connection with trial  
practice.

THE COURT: What I just wanted to point out is  
in conjunction with what we're going to be

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1 eventually talking about, we're now dealing with  
2 the Motion to Strike Epstein's Untimely  
3 Supplemental Exhibits and to Strike All Exhibits  
4 and Any Reference to Documents Containing  
5 Privileged Materials Listed on Edwards' Privilege  
6 Log.  
7 MR. SCAROLA: Yes, sir.  
8 THE COURT: That led into what I described  
9 earlier of the motions that will be on the table.  
10 MR. SCAROLA: That's correct. And that's why  
11 I acknowledged, your Honor, that we're really  
12 dealing with a number of closely-related motions.  
13 So the first issue is a procedural issue; and  
14 that is, whether your Honor is going to allow the  
15 listing and use of 724 new exhibits. And my  
16 suggestion to the Court is that that is a threshold  
17 issue that really helps to resolve much of what  
18 follows because if, as a matter of procedure, those  
19 724 new exhibits are not going to be used, then  
20 much of the rest of the argument becomes  
21 irrelevant. There are, however, very significant  
22 substantive issues if the procedural determination  
23 does not dispose of the use of those exhibits.  
24 THE COURT: These exhibits specifically were  
25 added when?

6

1 MR. SCAROLA: They were added by a new list  
2 filed on March 5th of 2018.  
3 THE COURT: Okay. Just to put this into  
4 perspective, March 5th would have been Monday of  
5 this week, today being March 8th, and the trial  
6 starting on March 13th, presuming it begins as  
7 scheduled.  
8 MR. SCAROLA: Yes, sir. But I want to make it  
9 clear that while the 724 were never listed on a  
10 prior exhibit list before March 5, some of those  
11 documents were disclosed to us over the past three  
12 weeks. So I am not suggesting to your Honor that  
13 the first notice we got of an intent to attempt to  
14 use these documents was March 5. The first notice  
15 we got of an intent to attempt to use some of these  
16 documents started some three weeks ago as new  
17 disclosures were sent to us.  
18 And again, this is from memory, but I think  
19 there may have been three separate groups of  
20 documents that were sent to us not covering all of  
21 the 724. And obviously, your Honor knows from the  
22 materials that you have reviewed much attention was  
23 focused on documents that we contend and have  
24 contended for eight years are privileged documents.  
25 Documents listed on a very specific privilege log.

7

1 And those are 45 of the 724 newly-listed documents.  
2 And those documents were brought to our attention  
3 just last week.  
4 So my suggestion to your Honor is that we deal  
5 first with the procedural issue because, as I said,  
6 that will narrow issues significantly. And then  
7 there will still remain some substantive issues  
8 with regard specifically to any attempted use of  
9 privileged materials.  
10 Now, your Honor heard from both opposing  
11 counsel that I have accused them of having stolen  
12 the documents. I assure your Honor that that's not  
13 the case. I have not accused them of having stolen  
14 the documents. What I have said in repeated  
15 communication is that these are stolen documents.  
16 And these documents, if your Honor has had an  
17 opportunity to look at the timeline, were very  
18 clearly at this point handed over by the bankruptcy  
19 court to Fowler White for one purpose and one  
20 purpose only; and that was to print them out, Bates  
21 stamp them so that they could be turned over for  
22 privilege review by the Farmer Jaffe law firm,  
23 including specifically Brad Edwards.  
24 THE COURT: Let me stop you there so we can  
25 put this in context.

8

1 Joe Ackerman, as I recollect, was representing  
2 Mr. Epstein for some period of time, and he was at  
3 that juncture associated with the Fowler White firm  
4 in some capacity.  
5 MR. SCAROLA: Yes, sir. That's correct.  
6 THE COURT: So if I'm understanding this  
7 correctly then, the bankruptcy court turned the  
8 documents over to Fowler White.  
9 MR. SCAROLA: Did your Honor want me to get  
10 into that now? I'm happy to do that.  
11 THE COURT: So that I understand. I know  
12 during a very tumultuous period of time these would  
13 be the Rothstein firm's employee.  
14 MR. SCAROLA: Yes, sir. Let me go through  
15 this and give you a quick overview, although all  
16 the details are provided in the timeline that I  
17 provided to your Honor.  
18 What happened was that almost immediately  
19 following the implosion of the Rothstein,  
20 Rosenfeldt, Adler firm a trustee was appointed by  
21 the bankruptcy court to take control of the firm,  
22 and that trustee took control of all of the firm's  
23 files and all of the firm's electronic data,  
24 including all of its e-mail servers. So it is the  
25 trustee that had possession of all of these

9

1 e-mails.

2 Mr. Epstein through counsel, and at this point

3 it was the Fowler White firm, issued a subpoena in

4 our civil litigation, then pending in front of

5 Judge Crow, for the trustee to produce all of the

6 e-mails. Judge Ray, to whom that subpoena was

7 referred, Judge Ray appointed Judge Carney as a

8 special master to make a determination as to what

9 could appropriately be turned over because

10 obviously these were e-mails that related to a wide

11 variety of cases. It was the entire contents of

12 the e-mail server of Rothstein, Rosenfeldt, Adler,

13 and it was recognized that those e-mails could

14 contain attorney/client and work product privileged

15 materials. So Judge Carney was appointed a special

16 master to make a determination as to what should

17 and could be turned over and report back to Judge

18 Ray.

19 Judge Carney gets 27,000 e-mails and Judge

20 Carney says, "I don't have an appreciation as to

21 what may be privileged here. We need to come up

22 with a procedure so that I can be advised of what

23 privilege assertions are being raised." So Judge

24 Carney says, "I want what was then the newly-formed

25 law firm that Mr. Edwards is working in, I want

10

1 Jaffe, Weissing, Edwards, Fistos and Lehrman" --

2 THE COURT: Farmer Jaffe, right?

3 MR. SCAROLA: Yes. Farmer Jaffe.

4 THE COURT: We can just refer to them as

5 Farmer Jaffe.

6 MR. SCAROLA: All right. "I want Farmer Jaffe

7 to go through these e-mails and prepare a privilege

8 log. Let me know what's privileged here, and then

9 I'll make a determination as to what's going to get

10 turned over."

11 The response from Mr. Edward through me is

12 this is 27,000 e-mails, they want them, they should

13 be responsible for printing them and Bates stamping

14 them and delivering those printed and Bates stamped

15 documents to us for our review. And Judge Ray

16 enters an order.

17 And Judge Ray says in his order -- and it's

18 quoted in relevant part at the bottom of the first

19 page of this timeline -- Judge Ray says the law

20 firm of Fowler White will print a hard copy of all

21 the documents contained on the disks with Bates

22 numbers added and will provide a set of copied,

23 stamped documents to the special master and an

24 identical set to Farmer, who will use the same to

25 create its privilege log.

11

1 And Judge Ray, federal bankruptcy Judge Ray,

2 says, "Fowler White will not retain any copies of

3 the documents contained on the disk provided to it

4 nor shall any images or copies of said documents be

5 retained in the memory of Fowler White's copiers.

6 Should it be determined that Fowler White or

7 Epstein retained images or copies of the subject

8 documents on its computer or otherwise, the Court

9 retains jurisdiction to award sanctions in favor of

10 Farmer, Brad Edwards or his client."

11 So it was obvious that what was to happen at

12 that point was they were to take over the

13 ministerial task as officers of the court of

14 bearing the expense to turn these documents over to

15 Farmer Jaffe and Brad Edwards for purposes of

16 preparing a privilege log.

17 THE COURT: For lack of a better metaphor,

18 though, wasn't that a fox in a henhouse type of

19 situation?

20 MR. SCAROLA: Well, sir, were these not

21 officers of the court, the answer to that question

22 is yes. These were adversaries who were being

23 given control over these documents, but they were

24 adversaries who had a sworn duty to follow the

25 Court's direction. And we had every reason to

12

1 believe that this respected law firm and these

2 respected lawyers would do exactly what they were

3 told to do.

4 Now, we know that the disk that contained that

5 information, as has been conceded by Epstein's

6 counsel, was formatted on December 10 -- excuse

7 me -- December 8th of 2010.

8 THE COURT: What do you mean by the disk was

9 formatted?

10 MR. SCAROLA: What I mean was the documents on

11 that disk were divided into three different

12 categories.

13 THE COURT: And that was December 10?

14 MR. SCAROLA: December 8th of 2010.

15 THE COURT: Thank you.

16 MR. SCAROLA: So within approximately one week

17 after being ordered not to retain any copies

18 there's a disk that is formatted by Fowler White,

19 which is the disk that is now in the possession of

20 Jeffrey Epstein and Jeffrey Epstein's counsel. And

21 it contains without a doubt those documents that we

22 identify on a privilege log that is generated as a

23 consequence of that process. It contains those

24 privileged and attorney work product e-mails. And

25 that assertion of privilege has never been

1 overruled.

2 THE COURT: Did the Special Magistrate Carney  
3 or Judge Ray ever hold a hearing to determine the  
4 nature of the privilege? Was that ever called up  
5 for a hearing?

6 MR. SCAROLA: What happened, your Honor, is  
7 that Judge Crow, when he learned of the  
8 circumstances of what was going on in bankruptcy  
9 court, communicated to Judge Carney, "This subpoena  
10 was issued in my case. While I respect you and the  
11 work you are doing, it is my job to decide what is  
12 relevant and material in my case and it is my job  
13 to determine issues of privilege in my case." That  
14 short circuited the work that was going on in the  
15 bankruptcy court, and Judge Carney never issued any  
16 rulings in that regard.

17 So it then became a matter over which Judge  
18 Crow was exercising jurisdiction to determine how  
19 the subpoena issued in the Circuit Court State  
20 Court case, how that subpoena was going to be  
21 responded to. So our privilege log goes to Judge  
22 Crow.

23 And there's some back and forth about whether  
24 the privilege log is or is not adequate, and there  
25 is a direction with regard to certain requests for

1 documents on the privilege log. Specifically,  
2 there is a Request Number 13, which asks for  
3 communications between Farmer Jaffe and the federal  
4 government and communications between Farmer Jaffe  
5 and any members of the press. And those are  
6 ordered turned over. And those are turned over in  
7 full compliance with the Court's order. But the  
8 issues of privilege that were raised with regard to  
9 both attorney-client and work product privilege  
10 never gets ruled on by Judge Crow because before  
11 they are ruled on, a voluntary dismissal is taken  
12 of the claims against Brad Edwards.

13 So we have a privilege log in place. It  
14 specifically lists these documents. Some of these  
15 documents were listed as attorneys' eyes only. And  
16 that restriction has never been lifted. And some  
17 of these documents are listed on the separate  
18 privilege log, and those restrictions have never  
19 been lifted.

20 Now, in some of the communications that have  
21 gone on back and forth you may have seen reference  
22 to a disclosure to the Razorback defendants.

23 Excuse me. The Razorback plaintiffs.

24 THE COURT: That was the litigation led by  
25 Mr. Scherer.

1 MR. SCAROLA: That is correct. The Conrad  
2 Scherer firm was involved in that litigation, and  
3 the Conrad Scherer firm was also interested in  
4 getting to take a look at whatever relevant e-mails  
5 might have been in the hands of the bankruptcy  
6 trustee, and then got turned over to us.

7 Well, there were direct negotiations in which  
8 I was a personal participant with the lawyers for  
9 Conrad Scherer, and an agreement was reached with  
10 the lawyers for Conrad Scherer because, as we have  
11 told every judge before whom we have appeared with  
12 regard to these matters, we're not attempting to  
13 hide anything. You want to conduct an in-camera  
14 inspection, we want you to conduct an in-camera  
15 inspection because it will confirm that we're not  
16 attempting to hide anything.

17 We will turn over anything that you consider  
18 appropriate for us to turn over. But we have no  
19 ability to waive our client's attorney-client  
20 privilege, your Honor, and some of these e-mails  
21 clearly contain information that originated with  
22 clients. And we are in the midst at this point of  
23 still-pending litigation, and it is important for  
24 us to protect our work product privilege as well.  
25 Some of that litigation is still ongoing right now.

1 That's the Crime Victims Rights Act case.

2 So there is a very legitimate reason for us to  
3 be concerned about protecting both the work product  
4 privilege and the attorney/client privilege,  
5 particularly protecting it from Mr. Epstein, and  
6 particularly protecting it from Mr. Epstein now  
7 that we know there was a clear violation of the  
8 federal judge's order with regard to the matter in  
9 which these materials were to be handled.

10 Interestingly -- and I don't know whether  
11 there's any relationship or not -- but shortly  
12 after this disk is improperly retained by Fowler  
13 White, that Fowler White winds up withdrawing from  
14 the case. So they're gone. And apparently the  
15 disk sits there for years until a request is made  
16 to turn over all of Fowler White files.

17 And what we have been told is Fowler White  
18 initially, for whatever reason, resists that  
19 request, but Mr. Link and associates go down to  
20 Miami, they review files, they get their hands on  
21 this disk. There is a significant delay between  
22 their appearance in the case and when they finally  
23 go to look at the Fowler White files. Then there's  
24 a two-week delay between looking at the Fowler  
25 White files and receiving the disk. And then

1 there's a two-week delay between receiving the disk  
2 and starting to --

3 THE COURT: Excuse me just a minute.

4 Bailiff, see what may be transpiring outside,  
5 please. Pardon me. Off the record.

6 (Discussion held off the record.)

7 THE COURT: Go ahead. I apologize.

8 MR. SCAROLA: Your Honor, in the overall  
9 scheme of things, I don't think that those delays  
10 make very much difference at all. But these are  
11 the lawyers who, as your Honor has noted, announced  
12 to the Court that they were going to be ready for  
13 trial 90 days later, and here it is just weeks  
14 before this case is about to begin that they are  
15 first reviewing 36 boxes, or over 30 boxes of  
16 files. Might have been 31. I think 36 is the  
17 number. But boxes of files that never even got  
18 reviewed by them.

19 So those are matters of significant concern to  
20 us. But the matter of greatest concern is that  
21 once it becomes apparent that these are documents  
22 that are listed on our privilege log, a privilege  
23 that has never been challenged, a privilege that  
24 remains in place, and we notify opposing counsel  
25 here is our privilege log, here are the numbers,

1 the Bates numbers of these documents on that  
2 privilege log, you have an obligation, an ethical  
3 obligation, to turn them over to us, to turn them  
4 over now, and to make no use of those documents  
5 unless and until you have a court order that says  
6 otherwise. You need to tell us where did you get  
7 them, when did you get them, how did you get them,  
8 to whom have you distributed them? And those are  
9 questions that we still don't have answered.

10 What we get from the other side is, "Well,  
11 they could have come from here, they could have  
12 come from there, maybe they came from someplace  
13 else, we don't know." And if they don't know where  
14 they came from and that source is clearly a proper  
15 source, they have the burden in overcoming this  
16 privilege assertion to prove a waiver if they  
17 contend any waiver existed.

18 It wasn't with regard to Conrad Scherer  
19 because when those documents were turned over to  
20 Conrad Scherer -- and we have the letters that  
21 confirm the written agreement with every detail of  
22 that agreement in place -- those were turned over  
23 as part of a common interest privilege with an  
24 express representation it was attorneys' eyes only,  
25 with an express representation they would be turned

1 over to no one. Indeed, when they got turned over  
2 to Conrad Scherer, they were originally turned over  
3 with a confidentiality watermark on every document.

4 And then they contacted us back again and  
5 said, "We're trying to OCR all of these documents  
6 so that they are searchable, and we can't do that  
7 with the watermark on them. Can you please provide  
8 us with another copy without a watermark?" And we  
9 did that; again, trusting these officers of the  
10 court to abide by their agreement. And we have  
11 every reason to believe that Conrad Scherer did.  
12 They were not the source.

13 The obvious source, based now upon what we  
14 have been able to piece together, is very clearly  
15 Fowler White's improper retention of this material  
16 after they had been expressly ordered by the  
17 federal court not to retain any of it.

18 Now, every representation I have made to the  
19 Court, everything that is included on this timeline  
20 can be established through documents that pinpoint  
21 the dates and the identity of the individuals  
22 involved and the character of every disclosure that  
23 was made and every disclosure that was withheld.  
24 It has taken a substantial effort to put all of  
25 this together again. We have been working on this

1 many, many, many hours. But the subject of  
2 appropriate sanctions is a subject for another day  
3 except to this extent: We need to know who has  
4 access, who has had access to this confidential  
5 material. We need to know if there's some intent  
6 to call a witness who may have been given access to  
7 this confidential material. We need to know all of  
8 the lawyers involved.

9 And Mr. Cassell is going to address from the  
10 perspective of the clients the concern that they  
11 have about being informed as to how their  
12 confidences have been breached. So with your  
13 Honor's permission, I would like him to have an  
14 opportunity to address the Court briefly on that  
15 topic.

16 THE COURT: What I'd like to do, though, is  
17 allow defense counsel to be able to speak to the  
18 threshold Binger analysis dealing with the late  
19 disclosure, because if Mr. Scarola is right and  
20 that is that these exhibits were listed for the  
21 first time in March, which would have been three  
22 days ago, and discussed perhaps within the last few  
23 weeks, then we would have essentially a Binger  
24 issue to analyze. So Miss Rockenbach, go ahead and  
25 proceed in that respect, please.

1 MS. ROCKENBACH: Thank you, your Honor. I am  
2 certain that this courtroom is a place where we are  
3 searching for truth and not hiding evidence,  
4 whether it is evidence that causes conclusion by  
5 this Court that there is no case to be tried. And  
6 for the first time after four days of -- and we use  
7 that word --

8 MR. SCAROLA: Excuse me. I'm sorry. If this  
9 is one of the privileged e-mails, and I assume it  
10 probably is, your Honor has entered an order  
11 sealing these documents, and the press is present.  
12 It is being displayed prominently in violation of  
13 ethical obligations to relinquish possession of  
14 these documents.

15 THE COURT: All right. In lieu of publication  
16 in open court, why don't you just hand me the  
17 document, making sure that counsel also has the  
18 copy or is referenced with the correct Bates stamp.

19 MS. ROCKENBACH: This is the Bates stamp  
20 e-mail 04408; an e-mail from Bradley Edwards to  
21 Paul Cassell, October 17, 2009.

22 THE COURT: Okay. Is this an extra copy?

23 MR. SCAROLA: Do we have an extra copy,  
24 please? There are literally thousands of e-mails  
25 we're dealing with.

1 THE COURT: Outside of the Court's review?  
2 Are you objecting to my review?

3 MR. CASSELL: No. We're not waiving any  
4 privileges, but we don't want there to be any  
5 public reference to the contents.

6 THE COURT: All right. Thank you for that  
7 clarification. So let me go ahead and try and put  
8 my hands on --

9 MS. ROCKENBACH: Your Honor, I can give you  
10 the copy that Terry noted was 04408. I don't need  
11 it.

12 THE COURT: Okay, that's fine.

13 MS. ROCKENBACH: The purpose of me putting  
14 this particular piece of evidence, which I've been  
15 asked on multiple occasions by Mr. Scarola to  
16 destroy by the barrage of e-mails over the past  
17 four days, I'm handing it to the Court as evidence  
18 of no Binger surprise. It can't be Binger surprise  
19 by Mr. Edwards if he is authoring an e-mail with  
20 regard to this very action that's pending before  
21 this Court about five to six weeks before  
22 Mr. Epstein sued him. So that can't be a surprise  
23 to Mr. Edwards. It actually makes this case  
24 incredibly stronger for the issue of probable  
25 cause.

1 MR. LINK: It's in the appendix that we've  
2 provided you.

3 THE COURT: I'm familiar with it from reading  
4 the materials myself and I could probably put my  
5 hands on it.

6 MR. LINK: It's in the appendix, your Honor.  
7 Appendix 1.

8 MR. VITALE: Bates number?

9 MS. TERRY: 04408.

10 MS. ROCKENBACH: That's it. Thank you.

11 THE COURT: And I have it, too. I can get my  
12 hands on it pretty easily, I think.

13 MR. CASSELL: Your Honor, if I could just be  
14 heard just briefly.

15 THE COURT: Go ahead and introduce yourself to  
16 our new court reporter.

17 MR. CASSELL: Paul Cassell on behalf of three  
18 victims, LM, EW and Jane Doe.

19 We'd like the record to be clear that we're  
20 joining in the objection to any public disclosure  
21 or reference to these documents.

22 THE COURT: Well, reference and public  
23 disclosure are two different things, Mr. Cassell.

24 MR. CASSELL: I'm sorry. Any disclosure of  
25 the contents or the substance of these documents.

1 But more importantly, your Honor, it's about  
2 the truth. It's about the truth and the fact that  
3 over the past four days my professional integrity,  
4 my character has been impugned to the extent that  
5 very simply we told -- actually, I didn't respond  
6 to any single e-mail. For the record, Mr. Link  
7 responded to e-mails. I didn't want to respond to  
8 what I saw was escalating e-mails that started off  
9 with a demand that we destroy evidence, which I  
10 know as an officer of the court I cannot do, and a  
11 demand to disclose who, how, where. And we  
12 immediately did. Fowler White.

13 Then I had my paralegal issue an affidavit  
14 that established chain of custody. I obtained the  
15 Fed Ex receipts for the three boxes that contained  
16 this incredible disk. And that's on file with the  
17 court.

18 But the e-mails did escalate, and we were  
19 asked -- no, demanded -- demanded on multiple times  
20 to destroy evidence. I was called unethical more  
21 than four times, sanctions were mentioned, the  
22 words improper, unethical, six times, hid,  
23 disturbing, misdeeds. And then last, but not  
24 least, Mr. Scarola did in fact -- and this is not  
25 privileged -- did in fact send an e-mail indicating

1 that he didn't want a special master, declined our  
2 request for one because it does not take a special  
3 master to determine that stolen privileged  
4 documents -- this is for the first week, or the  
5 first time the week before trial -- are  
6 inadmissible. I disagree.

7 No court has looked at these e-mails. And  
8 your Honor just asked that question, which was  
9 really important, did Judge Crow look at these  
10 in-camera and determine the privilege issue?

11 So I am very pleased and I agree with  
12 Mr. Scarola for the first time I heard just now a  
13 request or an agreement, not even a request, an  
14 agreement that these should be looked at in-camera.  
15 They absolutely should be looked at in-camera  
16 because they eviscerate Mr. Epstein's malicious  
17 prosecution case from proceeding.

18 THE COURT: Mr. Edwards.

19 MS. ROCKENBACH: Mr. Edwards.

20 But so disturbed was I by the barrage of  
21 e-mails, I reached out to the former ethics  
22 director of the Florida bar, a trusted colleague,  
23 Tim Chinaris. I have the affidavit. I don't know  
24 if your Honor has.

25 THE COURT: I don't remember seeing it.

1 These e-mails, your Honor, go to the very  
2 heart of this malicious prosecution case and  
3 whether it can proceed.

4 But returning to Mr. Chinaris, he had three  
5 opinions after reviewing the relevant documents,  
6 speaking to both Mr. Link and myself, based on the  
7 escalating accusations over the course of four  
8 days. And his three opinions are reflected in  
9 paragraphs 29, 30 and 31.

10 Mr. Link and Miss Rockenbach have acted in an  
11 ethically proper manner. That was one. Number  
12 two, the documents in question were not  
13 inadvertently provided nor wrongfully obtained by  
14 Mr. Link and Miss Rockenbach --

15 MR. SCAROLA: Excuse me. Your Honor, if this  
16 is going to turn into an evidentiary hearing with  
17 regard to the ethical propriety of opposing  
18 counsel's conduct, I object to this affidavit as  
19 hearsay and I want to be able to cross-examine any  
20 ethics expert who is of the opinion that retaining  
21 privileged documents known to be privileged listed  
22 on a privilege log when there is no knowledge as to  
23 the source of those documents and a court order  
24 exists saying you're not allowed to have them, I  
25 want to cross-examine that expert.

1 MS. ROCKENBACH: It was very significant  
2 because I was being asked to destroy evidence, I  
3 was being called unethical for the first time in 23  
4 years, and then I saw the word stolen, and honestly  
5 my heart was broken. So Mr. Chinaris has an  
6 affidavit that I've filed with the Court. He knows  
7 the information --

8 THE COURT: Is that in this?

9 MR. LINK: Your Honor, it's in the package we  
10 delivered right before lunch.

11 THE COURT: Okay. I'll be glad to take a look  
12 at it.

13 MS. ROCKENBACH: He was the ethics director  
14 for the Florida Bar for almost a decade, authoring  
15 thousands of opinions on legal ethics for lawyers  
16 facing issues with regard to the rules of  
17 regulating the Florida Bar.

18 One of the rules that I was thinking about in  
19 terms of this hearing was 4-3.3 because both sides,  
20 including Mr. Edwards, who happens to be party but  
21 should be held to a higher standard than just a  
22 simple party, has a duty to disclose candor toward  
23 the tribunal. That Florida 4-3.3 rule is very  
24 significant in this case because no one can advance  
25 false statements or positions to this Court.

1 THE COURT: Well, the objection is sustained  
2 in the sense that I really do want to, as I  
3 indicated earlier, continue to as best as we can  
4 conduct the proceedings in a way that befits the  
5 known integrity of not only the attorneys here  
6 before us but also the history that has been  
7 pervasive in the 15th Judicial Circuit. So I don't  
8 want this to dissolve into an ethical discussion as  
9 to whether or not someone committed some type of  
10 ethical violation. That's really not my focus  
11 today. And that focus is better suited for others  
12 perhaps at a different time and even perhaps in a  
13 different forum.

14 Really what has to be attempted to be divined  
15 today is some type of representation by counsel for  
16 Mr. Epstein as to what the source of these  
17 documents were.

18 MS. ROCKENBACH: Yes, your Honor.

19 THE COURT: Why were they preserved, how were  
20 they preserved, for what reason were they  
21 preserved, did that preservation violate or come  
22 close to violating an order of the bankruptcy  
23 court, has the privilege been waived? And then we  
24 get back again to the Binger analysis.

25 I did a quick word search, and the Fifth

1 District provides us with some recent direction and  
2 assistance and talks about the issue of surprise.  
3 And it says, quote, "The opposing party also  
4 earlier attempted to exclude the surprise testimony  
5 by an unsuccessful motion in limine. Furthermore,  
6 prejudice in the context of Binger refers to the  
7 surprise in fact of the objecting party and is not  
8 dependent upon the adverse nature of the  
9 testimony." So that's where we are also going to be  
10 focusing today.

11 But I don't want to get into a discussion as  
12 to present counsel's ethical responsibilities  
13 unless we have to as it relates to the origin of  
14 how, if counsel is aware, these documents inclusive  
15 of the e-mails, and particularly as it relates to  
16 the 724 allegedly new exhibits being added formally  
17 for the first time on March 5th, just three days  
18 ago, and certainly outside of the Court's pretrial  
19 order in terms of timeliness, whether they  
20 constitute prejudice. So let's try to focus there,  
21 if we could.

22 And I understand, just so the record is clear,  
23 doing this for a long time both as a trial lawyer  
24 and as a judge, I understand how feelings can be  
25 hurt, I understand how people can take umbrage at

1 certain things that are said.

2 The beauty of being an experienced trial  
3 judge, if nothing else, is developing a thick skin.  
4 Sometimes I'll hear people say something and use my  
5 name and they don't even know I'm standing there.

6 MR. LINK: That wasn't me, was it, Judge?

7 THE COURT: No. And I understand that there  
8 are going to be instances where people are going to  
9 think that I'm the best in the world and the  
10 absolute worst in the universe. I've come to that  
11 rationale pretty quickly. It took some time, but  
12 it was fairly quickly. But I do understand. I  
13 don't want anyone to think that I'm not  
14 compassionate to the extent that I recognize that  
15 there have been accusations hurled here which may  
16 be minimally considered offensive and accusatory.  
17 But let's move beyond that for now and let's get to  
18 some of the issues that I discussed earlier that we  
19 can focus on relating to decisions that I'll have  
20 to make concerning the potential admissibility of  
21 this evidence.

22 MS. ROCKENBACH: Thank you, your Honor. I  
23 appreciate that.

24 And we have established the chain of custody  
25 through the affidavit of Tina Campbell from our

1 office. So it is clear we did not improperly  
2 obtain them, nor were they inadvertently disclosed  
3 to us.

4 THE COURT: Tina Campbell is your paralegal?

5 MS. ROCKENBACH: Who obtained the three boxes,  
6 the three boxes from Fowler White, which contained  
7 that CD which is at issue.

8 THE COURT: I think the disconnect we're  
9 having here today is not so much the fact that  
10 Miss Campbell received the boxes or somebody got  
11 notice that the boxes were there --

12 MS. ROCKENBACH: It was an issue.

13 THE COURT: -- and that somebody did what they  
14 did. And there may have been an issue with regard  
15 to Fowler White voluntarily turning them over.  
16 Those are things that can be dealt with later on.  
17 And again, it may be a different forum than I'm  
18 even dealing with here today.

19 But what I'd like to know is how Fowler White  
20 got the documentation, do we to know that, whether  
21 or not that documentation was obtained or retained  
22 in a manner that either was in violation of Judge  
23 Ray's order or walked a certain tightrope that  
24 could be construed as a constructive violation of  
25 that order. And if we know that, then it would go

1 a long way in me trying to make a determination as  
2 it relates to Binger and its progeny.

3 MS. ROCKENBACH: Thank you.

4 THE COURT: So that's really where we need to  
5 focus.

6 I have no problem and I don't think  
7 Mr. Scarola has any problem in terms of the fact  
8 that you all did your homework; albeit, from his  
9 position, late in the game, and secured this  
10 information from Fowler White. The critical  
11 question, though, is why did Fowler White have  
12 these documents, why were they continued to be  
13 held, and was it in violation either expressly or  
14 constructively as it relates to Judge Ray's order?

15 MS. ROCKENBACH: Thank you, your Honor.  
16 Mr. Link has studied this issue and will address  
17 that.

18 MR. LINK: So, Judge, let me see if I can  
19 clarify a couple of things.

20 First, these exhibits that we're talking about  
21 from the disk, they absolutely were just listed on  
22 our exhibit list. They were just located by us in  
23 the last week. However, on our exhibit list it's  
24 always been a general category, as Mr. Scarola  
25 said. The reason there are 749 specific exhibits

1 is the clerk required it. So --

2 THE COURT: The clerk required it?

3 MR. LINK: Specific. You have got to do --

4 THE COURT: The clerk, you're saying? Or the  
5 Court?

6 MR. LINK: The Court.

7 THE COURT: Oh, okay. I thought you were  
8 saying --

9 MR. LINK: It's called the clerk's exhibit  
10 list for the Court, but the Court did it.

11 THE COURT: So in conjunction with an order  
12 that I had made earlier in the proceeding that I  
13 was not going to allow general catchall types of  
14 exhibit identification, I required that each and  
15 every exhibit be specifically listed. And we've  
16 gone through myriad exhibits in our quest to  
17 determine whether or not, for example, the Fifth  
18 Amendment privilege is going to be recognized and  
19 other issues having to do with admissibility. And  
20 that was generally followed, to my recollection,  
21 because I dealt with many specifically identifiable  
22 exhibits. So yes, I agree that that was something  
23 that the Court had a specific interest in and has  
24 always taken the position that all cards are going  
25 to be on the table in a timely fashion so that,

1 number one, first and foremost once all the cards  
2 are on the table, the law favors settlement, and it  
3 may come to fruition, and has more often than not  
4 resulted in an amicable resolution to a case. And  
5 as importantly, both sides are adequately prepared  
6 so that, as I mentioned in this Pollard case, no  
7 one is unduly surprised by something that comes  
8 before them at or near the beginning of trial.

9 MR. LINK: Yes, sir. So that is why we did  
10 that.

11 The second thing I want to point out to the  
12 Court is that Mr. Edwards did the same thing and  
13 filed exhibits after the order, just like we did.  
14 And I'm not complaining --

15 THE COURT: Well, if you're not complaining  
16 about it --

17 MR. LINK: The reason I want to explain is  
18 because in our pretrial stip I'm of the mindset  
19 when we reach agreement, we have an agreement. And  
20 in our agreement, your court order says no  
21 additional exhibits unless the parties agree. In  
22 the pretrial stip Mr. Scarola and I agreed we  
23 reserved our right to add additional exhibits. So  
24 in compliance with the pretrial stip and this  
25 Courts' order requiring us to identify them, we've

1 been doing that, sir.

2 THE COURT: Okay.

3 MR. LINK: So we are not in violation of the  
4 Court's order. Mr. Scarola and I again agreed to  
5 do this.

6 So let's talk about Fowler White because it is  
7 as clear as mud. It is not as clear as Mr. Scarola  
8 says. Here is why. If you look at his --

9 THE COURT: That metaphor, I'm not sure I  
10 understand clear as mud.

11 MR. LINK: It's not clear. That's the point.  
12 It's not clear, frankly. So it is not as simple  
13 and clear as Mr. Scarola says. And I want to show  
14 you why.

15 I honestly cannot tell you, I can't, where the  
16 disk came from that end up in Fowler White's file.  
17 I can't. We have looked for every piece of  
18 communication, correspondence, we've gone through  
19 their boxes three times trying to answer that  
20 question. We have reached out to lawyers for  
21 Fowler White. They have no memory of it. So we,  
22 like Mr. Scarola --

23 THE COURT: Excuse me. Is Mr. Ackerman still  
24 actively practicing?

25 MR. LINK: He is, yes. And we reached out to

1 Joe Ackerman. Mr. Ackerman. Sorry. We reached  
2 out to Mr. Ackerman.

3 Here is why it's confusing. And I think this  
4 is really important to understand what happened.

5 When the trustee took over the files, there  
6 was an understanding by Mr. Edwards and his firm  
7 that there would be about 5,000 e-mails, and they  
8 agreed to do a -- go through them and do a  
9 privilege log. What's missing from Mr. Scarola's  
10 timeline is that in November 2010 Edwards informed  
11 the bankruptcy court that the trustee had produced  
12 74,000, 74,000 pages of documents on two compact  
13 disks. Not one. On two.

14 So then what happened, because of the volume,  
15 Mr. Edwards and his firm goes in and says, "Judge,  
16 we need more time. We did not know we were going  
17 to get 74,000 pieces of paper and we need time to  
18 go through them."

19 THE COURT: I may have lost you. The 74,000  
20 pages were self-generated from the Rothstein firm?

21 MR. LINK: Yes. And delivered by the trustee  
22 to Mr. Edwards.

23 THE COURT: And Mr. Edwards, you're  
24 suggesting, indicated that they need more time to  
25 review the e-mails or whatever documents --

1 MR. LINK: Correct.  
2 THE COURT: -- they may have encompassed, and  
3 to raise objections, and that forum was the  
4 bankruptcy court.

5 MR. LINK: All this started in the bankruptcy  
6 court.

7 So when Mr. Scarola says there was one disk  
8 produced by the trustee with 27,000 e-mails on it,  
9 that's not true. There are two disks and there's  
10 74,000 e-mails. That's what Mr. Edwards  
11 represented to the Court. I haven't seen these  
12 disks, but that's what Mr. Edwards represented.

13 So what happens after that is there is a  
14 complicated negotiation between the Fowler White  
15 firm and Mr. Farmer, on behalf of the Farmer Jaffe  
16 firm, about how are they going to take these  
17 documents, which are not Bates stamped, not Bates  
18 stamped, and they wanted a hard copy to review so  
19 they could make a privilege log, but they didn't  
20 want to pay for it. The trustee didn't want to pay  
21 for it.

22 Mr. Epstein volunteered with the special  
23 master -- actually, Fowler White -- but  
24 Mr. Epstein's counsel volunteered that they would  
25 use their machine to print out, print out from the

1 disk that had no Bates stamps on them, documents,  
2 and Mr. Farmer agreed to that.

3 So they print the documents out -- long before  
4 our time, Judge -- they print the documents out, a  
5 set is given back to the trustee, and a set is  
6 given to Farmer Jaffe. The machine that prints it,  
7 according to the magistrate and all the  
8 communications, doesn't retain any image. So we  
9 start with two disks. To make it more complicated,  
10 there was three. One had a problem. But let's go  
11 with two disks and 74,000 pages.

12 They print them out. Hard copy documents.  
13 One to the trustee, one to Farmer Jaffe. The  
14 magistrate wants a copy, and so you will see the  
15 magistrate gets two disks: One with 25,000 images  
16 on it and one with -- I can't tell you how many  
17 images because the special master says, "I didn't  
18 look at it."

19 I think -- this is Scott Link guessing -- I  
20 want to be clear about this -- I think the disk  
21 that ends up at Fowler White was the special  
22 master's disk. And here is why I think that: A,  
23 it was in a file that said Special Master. B --  
24 none of which makes sense to me until we put this  
25 together. B, there's a hearing where Mr. Scarola

1 says to him, "You, special master, review all these  
2 documents." Just like he said here, he said it ten  
3 times, "We have nothing to hide. You decide what  
4 should be turned over." The trail goes cold. I  
5 can't find a letter or communication from the  
6 special master that says, "I looked. Here they  
7 are." But I know this: The disk that was sent to  
8 Fowler White to copy had no Bates stamp.

9 When you look at the judge's order from Judge  
10 Ray that Mr. Scarola pointed out, it says Fowler  
11 White will print a hard copy of all the documents  
12 contained on the disk with Bates numbers added.  
13 That's how they were going to do it.

14 THE COURT: And that disk, I presume, that  
15 you're alluding to did have Bates numbers on them.  
16 I'm talking about the individual documents.

17 MR. LINK: Yes, sir. They're all Bates  
18 stamped. So they were not the disks  
19 provided -- again, I can't say they're not. I'm  
20 not testifying. This is Scott Link's forensic  
21 review.

22 THE COURT: But again, Mr. Link,  
23 respectfully -- and I appreciate you're trying to  
24 put together and piece together something that  
25 transpired seven years ago -- the problem still

1 remains the same. Frankly, it doesn't really  
2 matter to this Court what format it was, who  
3 formatted it or to whom it was supposed to be  
4 intended. I'm sure there may be cases even after  
5 this Morley case that we'll be talking about  
6 tomorrow at length at the bar conference, but that  
7 case stands for the proposition globally of the  
8 sanctity in that particular case of the  
9 attorney/client privilege to something so  
10 rudimentary as whether or not an attorney referred  
11 a client to a given doctor for treatment. And the  
12 Supreme Court has clearly stated that information  
13 is privileged and will not be divulged.

14 MR. LINK: Yes, sir. I was just trying to  
15 answer your question about the disk.

16 THE COURT: Okay. So the point that I'm  
17 trying to make is when I'm saying it really doesn't  
18 matter, all of those other details, what matters to  
19 the Court is, again, Judge Ray's order relative to  
20 the sanctity of those documents, for lack of a  
21 better term, the protection of those documents at  
22 all costs, and that Fowler White shall not with the  
23 threat of sanctions retain any of those documents.

24 It says here, "Should it be determined that  
25 Fowler White or Epstein" -- so not only does it go

1 to Fowler White, but it goes to Epstein -- and  
2 constructively, if not explicitly, by this order  
3 extends to Mr. Epstein's legal representatives,  
4 from this Court's interpretation.

5 MR. LINK: Yes, sir.

6 THE COURT: "Should it be determined that  
7 Fowler White or Epstein retained images or copies  
8 of the subject documents on its computer or  
9 otherwise, the Court retains jurisdiction to award  
10 sanctions in favor of Farmer, Brad Edwards or his  
11 client," end quote.

12 MR. LINK: And I agree with that. The  
13 bankruptcy court reserved that. What I'm  
14 suggesting to the Court is I don't think it's as  
15 clear as Mr. Scarola said. And he may go to Judge  
16 Ray and Judge Ray will have a hearing. Based on  
17 what we've looked at, I don't believe it's as clear  
18 that that's what they did because it's possible,  
19 based upon what I've read --

20 THE COURT: That Fowler White did?

21 MR. LINK: Yes.

22 THE COURT: So are you suggesting to me  
23 that -- so that I'm understanding correctly --

24 MR. LINK: Yes, sir. I'm not here  
25 representing Fowler White.

1 THE COURT: I understand. But you're here  
2 representing Mr. Epstein, who by virtue of this  
3 order that is being highlighted in part on the  
4 ELMO, that Fowler White did what it was supposed to  
5 do pursuant to that order, returned everything that  
6 it was supposed to return, but through some  
7 happenstance had the disk containing the very  
8 information that was the source of Judge Ray's  
9 order and somehow, therefore, should be exonerated  
10 by virtue of the fact that because we really don't  
11 know how Fowler White may have gotten it, but  
12 assuming Fowler White did what it should have done,  
13 miraculously this disk turns up in Fowler White's  
14 files and hence we should essentially ignore the  
15 dictates of the order?

16 MR. LINK: No, sir. And I think I've confused  
17 the Court. Let me make sure you understand what's  
18 on this disk.

19 The 27,550 pages on this disk, we've only  
20 looked at 5,000 of them, okay? Of those 5,000, I  
21 will represent to you -- and you can look at  
22 them -- I don't believe any -- and I know none that  
23 we attached -- were communications between an  
24 attorney and a client.

25 I asked Mr. Cassell and I asked Mr. Scarola to

1 identify by Bates number if there are any  
2 attorney/client communications and we would  
3 segregate them. The response I got, every page is  
4 an attorney/client communication. So that's one.

5 THE COURT: But that's not what this order  
6 says, Mr. Link. The order doesn't say anything  
7 about privileged documents.

8 MR. LINK: Judge, I understand that.

9 THE COURT: The order says that Fowler White  
10 will not retain any copies of the documents  
11 contained on the disk provided to it nor shall any  
12 images or copies of said documents be retained in  
13 the memory of Fowler White's copies. And we  
14 already went through the sanctions.

15 MR. LINK: But we don't know -- here is the  
16 disconnect: We don't know as we sit here that the  
17 disk that we located there wasn't handed to them by  
18 Special Master Carney after Mr. Scarola gave him  
19 the job and said look at it and give them whatever  
20 you think is okay because the majority of the  
21 documents we've looked at have to deal with  
22 scheduling and sporting events and going out  
23 drinking and all kinds of things. It is not a  
24 group of documents that are on the privilege log.

25 Here is the second thing we learned --

1 THE COURT: And is that going to serve as the  
2 conduit to attempt to admit these documents into  
3 evidence in the face of the order that I have just  
4 read?

5 MR. LINK: Your Honor, I see the order. What  
6 I'm trying to get across -- I'm doing a lousy job.

7 THE COURT: No, you're not.

8 MR. LINK: -- is that I can't tell you.

9 THE COURT: Try to get to the point that I'm  
10 really --

11 MR. LINK: I don't think that we can conclude  
12 today that this disk is a result of their violating  
13 this order. This disk could have been as a result  
14 of the special master looking at it and saying, "I  
15 don't see communications between attorney/client, I  
16 believe there's been a waiver of the work product  
17 based on giving it to Razorback, issue injection,  
18 all of these issues have been raised."

19 THE COURT: So now you're suggesting that  
20 former Judge Carney, to my knowledge a very well -  
21 respected jurist who presided in the Circuit Court  
22 in Broward County, to my knowledge, and has done  
23 senior work here in the 15th Judicial Circuit  
24 somehow engaged in some type of ex parte  
25 communications with Fowler White?

1 MR. LINK: Judge, I can't because I've looked.  
2 I have searched. I'm not saying that at all. All  
3 I can piece together is that Mr. Scarola asked  
4 Special Master Carney to do that.

5 This disk, when we got -- we put a sticker on  
6 it. We went and looked at boxes and put stickers  
7 on things. The disk said Epstein Bates stamp. Had  
8 no idea what was on it. Looked like something we  
9 should put a sticker on. It came in, the disk, and  
10 we started looking at it.

11 When these issues came up, we asked Fowler  
12 White to please give us the original boxes. We got  
13 the original boxes and found the disk in a folder  
14 that says J. Carney printing on it. That's it.  
15 That's all that's on this folder.

16 There's no watermarks, there's no  
17 confidentiality agreement, there's no stamps on the  
18 documents. They are Bates stamped and there's a  
19 disk in there. So what I'm suggesting is if we're  
20 trying to figure out whether Fowler White violated  
21 the order, I don't think it's as clear as  
22 Mr. Scarola says.

23 Now, I wasn't there. I can't tell you what  
24 they did, Judge. But I do know this: Many of the  
25 documents that are on this disk and that are on

1 hearings on other matters of the 14- to 15 hundred  
2 files that I'm carrying in this division, of which  
3 this is but one, with the trial to commence on the  
4 morning of Tuesday, the 13th of March.

5 MR. LINK: Yes, sir.

6 THE COURT: That's a big endeavor. That is an  
7 endeavor that is beyond this Court's ability  
8 physically and from a time perspective. So I'm not  
9 going to do that.

10 MR. LINK: Your Honor, I know that you don't  
11 have the time. I have offered them a special  
12 master. They don't want to.

13 THE COURT: It's just too late.

14 MR. LINK: But Judge, the truth is never too  
15 late.

16 THE COURT: Please don't interrupt me.

17 MR. LINK: I apologize for that.

18 THE COURT: Protocol dictates the orderly  
19 administration of justice and, correspondingly, the  
20 orderly preparation for trial. That preparation --  
21 and you'll be surprised when it comes to larger  
22 cases like this -- not only applies to counsel and  
23 their team of attorneys that the respective side  
24 have, but it also applies to the singular  
25 individual who is responsible for this orderly

1 their privilege log have been used in this  
2 litigation. They have been used. They have  
3 produced some. They're exhibits that Mr. Edwards  
4 has asked about and answered that are on this  
5 privilege log. There's over a hundred of them.

6 So this disk is not a disk of their privileged  
7 documents. It's a disk of 27,500 documents. And  
8 what's the most important part of this is Judge  
9 Crow never held an in-camera. Nobody judicially  
10 has looked at these. And that's where we need to  
11 be.

12 I don't think any of this matters. What  
13 matters is we have the records, they're relevant,  
14 this Court should determine they're relevant, see  
15 if there's a privilege and see if that privilege  
16 has been waived. That should be the process.

17 THE COURT: On Thursday afternoon, which is  
18 going to be taken up by additional argument, where  
19 Friday I'm a committed member to the Bench Bar, as  
20 is encouraged not only by the 15th Judicial Circuit  
21 and Fourth District Court of Appeal but also by our  
22 local Bar Association, of which many of you are  
23 prominent members here, so you know that commitment  
24 must be taken seriously, and I do take it  
25 seriously, and then Friday I'm booked up with

1 presentation.

2 I often refer to a case that I printed  
3 directly from the Fourth District Court of Appeal,  
4 RJ Reynolds Tobacco Company versus Calloway, and it  
5 talks about the trial judge's ultimate  
6 responsibility. There it was to ensure appropriate  
7 attorney behavior, but it talks also about court  
8 exercising its control of the litigation of the  
9 trial, of important pretrial hearings like we're  
10 having here today, and talks about this is  
11 especially true in lengthy high-stakes cases and  
12 goes on to speak about what a court should and  
13 should not tolerate when it comes to interruptions  
14 and other matters that don't necessarily befit the  
15 presentation of otherwise excellent counsel.

16 But what I was trying to communicate while we  
17 were speaking over each other is that this is the  
18 very reason why courts have spoken to the issue of  
19 timely and reasonableness and preparation.

20 I can't speak to the matter in which this case  
21 has been prepared by counsel for Mr. Epstein over  
22 the last 3,000 and some odd days. I can, however,  
23 speak to what is before me now. Why someone before  
24 you and Miss Rockenbach got involved in this  
25 case -- because I saw Mr. Ackerman's name in this

1 matter in the four years that I've been presiding  
2 over this case -- I saw his involvement, I saw what  
3 he attempted to do. His timing was critical --  
4 whether his work was or wasn't is not for me to  
5 say, but certainly his time in which he spent in  
6 representing Mr. Epstein would have been critical  
7 to any successor counsel's involvement in this  
8 case.

9 Thankfully, for the purposes of most of the  
10 decision-making that I do here in the civil circuit  
11 courtroom I had experience, and I gained a  
12 significant amount of experience in a relatively  
13 quick amount of time. It was baptism by fire, I  
14 think some would call it. But I had opportunities  
15 to get into the courtroom long before others did  
16 who had the same experience level. Whether that  
17 was good or bad, the results speak for themselves.  
18 But I did have that opportunity. And to learn a  
19 great deal, not so much from those who I work with,  
20 but even more those who I work against, so to  
21 speak; my opposing counsel. The wealth of  
22 knowledge that I gained from how they did their  
23 work was astounding and something that I cherish  
24 even to this day. But what it taught me more than  
25 anything was that preparation is critical, whether

1 the case is a \$10,000 whiplash case or whether it's  
2 a \$10 million class action suit.

3 And the very essence of what's being brought  
4 to my attention today, where requests are made for  
5 in-camera inspections at a time that's essentially  
6 two to three business days prior to the  
7 commencement of trial, a special master to review  
8 thousands of documents several days before the  
9 commencement of trial for the first time, despite  
10 recalcitrance from Fowler White, their -- somebody  
11 reviewing their files apparently for the first time  
12 mere weeks before the case is going to court, those  
13 types of things have to be held -- I was going to  
14 say in high regard, but what was meant by what I'm  
15 saying is preparation in getting to these  
16 materials, there was nothing that I knew of despite  
17 again what appears to be brief recalcitrance on the  
18 part of Fowler White to turn over the materials  
19 themselves, this could have been done six months  
20 ago, a year ago, two years ago, three years ago,  
21 four years ago, five years ago, six years ago, and  
22 it should have been done then. To bring these  
23 types of matters before the Court at this  
24 particular time is, in my view, inappropriate.

25 Now, if this was newly-discovered evidence

1 that was not in the hands of Mr. Epstein's lawyers  
2 since 2009, whenever this all came to fruition,  
3 then I would say we'd have to take a different  
4 approach. But the very nature of the documents  
5 that we're talking about -- again, rightly or  
6 wrongly held -- were in fact held by Fowler White,  
7 Epstein's counsel, at an incredible crucial time in  
8 this process; and that being in and around 2010,  
9 when the Rothstein firm imploded, when these  
10 e-mails were apparently confiscated, when somebody  
11 made the decision that instead of Farmer paying for  
12 the copy costs, they be handed over to Fowler  
13 White. And if I have a bit of an incredulous tone  
14 to that statement, it's probably purposeful.

15 But the fact remains, Mr. Link, that these  
16 materials were in the hands of Epstein's attorneys  
17 from the inception of the issue itself. And to now  
18 come to the Court with not five pages of documents  
19 to look at, but 27,000, or whatever that number  
20 is -- it escapes me because of its sheer mass -- is  
21 impossible and is not going to be countenanced  
22 here.

23 And I understand what you're going to tell me  
24 because I've gotten a flavor for some of these  
25 documents that have been provided.

1 MR. LINK: Yes, sir.

2 THE COURT: And that is that they are  
3 detrimental to the position taken by Mr. Edwards  
4 and that they are helpful to the position taken by  
5 Mr. Epstein.

6 The issue, though, is one of whether the  
7 protocol and the orderly administration of justice  
8 is going to be forsaken notwithstanding also the  
9 aspect of privilege and the sanctity of privileged  
10 communications, whether all of those considerations  
11 are going to be thrown out when balanced against  
12 material that has been in the hands of  
13 Mr. Epstein's lawyers from day one. And I, for  
14 one, am not going to sacrifice protocol over what  
15 may or may not be, number one, privileged, and if  
16 not privileged, certainly late disclosed  
17 documentation of a massive nature.

18 Should the amount of documentation be a  
19 determinative factor in a court's analysis in this  
20 context, based upon 35 years of compound  
21 experience, bench and bar, and a little bit more  
22 now than half on the bench, I do not believe that  
23 the orderly administration of justice should be  
24 countenanced and should be disruptive. Should be  
25 disruptive.

1 And what I meant by that, should the  
2 destruction of the orderly administration of  
3 justice be countenanced? And the answer to that  
4 question, in my respectful view, is no. Because if  
5 I do it once, then I'm setting a precedent, even  
6 though I know trial courts traditionally don't do  
7 that, according to case law. And forgive me for my  
8 choice of words, but as someone who is a senior  
9 member now of the bench -- not a senior judge, but  
10 a senior member of the bench -- that sends a  
11 message to my colleagues that I'm not doing what I  
12 believe is the appropriate thing.

13 MR. LINK: May I respond, your Honor?

14 THE COURT: Sure.

15 MR. LINK: First I want to apologize. I did  
16 not mean to interrupt the Court when you were  
17 speaking.

18 THE COURT: Not at all. Go ahead.

19 MR. LINK: Second, we're not talking about  
20 27,000 pages, we're talking about 49 exhibits.  
21 There are only 49 exhibits that we are asking the  
22 Court to look at. So that it is not 27,000 pages.

23 Third, I think most importantly I absolutely  
24 agree your Honor has a difficult, difficult  
25 weighing decision to make between staying on course

1 and what I think is more important than any of  
2 this, which is getting to the truth. And I believe  
3 in my heart, your Honor, the reason I'm so  
4 passionate about this and the reason I apologize  
5 for interrupting you is if this courtroom is  
6 looking for the truth, then those 49 documents have  
7 got to come into court. They have got to go in  
8 front of the jury.

9 THE COURT: But they're not coming in here,  
10 and I would hope elsewhere, if it's going to be at  
11 the sacrifice not only as to the orderly  
12 administration of justice, but also in derogation  
13 of a federal bankruptcy court's order or any court  
14 of recognized jurisdiction's order that would have  
15 the necessary supervisory control of a given  
16 case, but also at the potential extermination or  
17 derogation of a privilege. And for all of those  
18 reasons is why I am extremely reluctant to start  
19 taking these things into consideration just a few  
20 days prior to trial.

21 Again, if this was something that came into  
22 play that was being hidden by the other side, and  
23 I'm talking now generically, and your side  
24 discovered that information at the 11th hour, this  
25 would be an entirely different discussion. And

1 that's one of the things I want to emphasize for  
2 this record. But that's not the case.

3 As I mentioned -- and this is the last time  
4 I'll say it -- these documents have been in the  
5 possession of Mr. Epstein from the inception of  
6 this case as we know it. They didn't move. And  
7 the problems that are inherent in this analysis, of  
8 which this Court simply does not have the time to  
9 address prior to trial, are all of those reasons  
10 that I have just described to you: The disruption  
11 of the orderly administration of justice, the  
12 sacrosanct nature of the privilege, and of even  
13 more importance is what I said I wouldn't repeat;  
14 and that is, that at all times material to the  
15 analysis, from the inception Epstein lawyers had  
16 this material. And, obviously, the timeliness, or  
17 the abject untimeliness of the request for the  
18 Court now to take these matters into consideration,  
19 where they are well beyond when exhibits that were  
20 known or should have been known were not listed.

21 MR. LINK: Your Honor, may I have one more  
22 shot, please? I know you have been very patient  
23 with me.

24 THE COURT: If it's going to be any different  
25 than what you've told me. If it's going to be the

1 same, we've already established, and it's a matter  
2 of record, and I have made my ruling accordingly.

3 MR. LINK: Yes, sir. I understand that. I'll  
4 be very quick.

5 You asked about whether there was any hiding  
6 of these documents. And one thing I want the Court  
7 to see is this: These are -- Mr. Scarola didn't  
8 want me to put that up on the screen, so I'll hand  
9 it to you.

10 If you look at the privilege log which they  
11 filed, which Judge Crow found inadequate -- and I  
12 don't believe there was another privilege log  
13 filed, so I don't think there's a privilege log --  
14 but that's another day, another issue -- but if you  
15 look at the privilege log and the e-mails that it  
16 relates to, tell me if a lawyer looking at that  
17 would be able to tell the real content of the  
18 e-mails that Mr. Edwards was writing. Because I  
19 think you have an obligation to disclose in a way  
20 that allows a lawyer to make a determination of  
21 whether it's privileged or not.

22 THE COURT: Mr. Link, you're making my point  
23 for me. Mr. Ackerman, Fowler White, had these  
24 materials ever since day one. I don't know how  
25 much more I can make this clear.

1 As I said, the analysis would be completely  
2 different if it was shown to me that somehow, some  
3 way the Searcy, Denney firm, Mr. Edwards, Farmer  
4 Jaffe -- I was going to say Ron Rothstein, but I  
5 don't want to get him confused with the well-  
6 respected coach and former coach of the Heat --  
7 Scott Rothstein was sitting on this stuff. That's  
8 not what happened here. That's the point that I'm  
9 trying to drive home and emphasize. Is not only  
10 the issue of timeliness, not only the issue of the  
11 privilege has not been tested, but first and  
12 foremost is the fact that Fowler White, Epstein's  
13 own lawyers, have been sitting on this from day one  
14 for seven, eight years.

15 MR. LINK: But we don't know -- the point I'm  
16 trying to make, I don't know that they looked at  
17 it.

18 THE COURT: That's not my problem.

19 MR. LINK: Maybe Carney gave it to them and  
20 said, "Don't look."

21 THE COURT: That's not my problem. If  
22 Mr. Epstein has a case against his attorneys, he  
23 can deal with those claims to his satisfaction.  
24 I'm not here to determine whether or not someone  
25 did or did not commit malpractice.

1 MR. LINK: I understand that, Judge.

2 THE COURT: I'm here only to deal with this  
3 issue that is before me; and that is, whether a  
4 wholesale late disclosure of significant exhibits  
5 that have been in the possession of Fowler White,  
6 Epstein's attorneys, from day one and, thus, as a  
7 matter of continuum in Epstein's possession, his  
8 possession is constructive to the possession of the  
9 attorneys that represented him, that string of  
10 attorneys that have been representing him since  
11 2010, and that if nobody got around to looking at  
12 Fowler White's documents -- and how that could be  
13 understood is beyond me, as not only a seasoned  
14 attorney but also now a seasoned judge -- until you  
15 and Miss Rockenbach took it upon yourselves and  
16 your paralegal to do it is not my problem. And  
17 that's all I'll say on the subject.

18 I have made my ruling. It is a several-  
19 pronged ruling. And for the reasons that I've  
20 stated, that's the reason why I am not going to  
21 engage in some type of a last-minute evaluation of  
22 documents that could have been evaluated from 2010  
23 all the way to March of 2018.

24 But nobody ever took it upon themselves to  
25 even look at those documents in Fowler White's

1 file. How that could be the case, who knows? But  
2 I'm not finding fault with anything you or  
3 Miss Rockenbach or Miss Campbell did. That's not  
4 the issue. You've done your job.

5 MR. LINK: I understand. Your Honor, may I  
6 have one minute to confer with appellate counsel to  
7 make sure there's nothing I need to do to preserve  
8 this?

9 THE COURT: Absolutely. Let's just take a  
10 brief recess.

11 (Thereupon, a short recess was taken.)

12 - - -

13 THE COURT: All right. Thank you again.  
14 Please have a seat. Welcome back.

15 MR. SCAROLA: Your Honor, I want to hopefully  
16 tie up a few loose ends on the matter that has just  
17 been ruled on.

18 Am I correct in understanding that the  
19 defendant is prohibited from making any use of the  
20 724 late-disclosed exhibits?

21 THE COURT: Yes.

22 MR. SCAROLA: Next, sir, we would request the  
23 defendant be required to relinquish possession of  
24 all copies of the privileged documents to the Court  
25 under seal. They have expressed some concern

1 stating that we have asked them to destroy them.  
2 We want them turned over to the Court under seal.  
3 They should no longer have possession of those  
4 until such time as somebody rules that they are  
5 entitled to have possession.

6 And I want to make one brief comment about  
7 that, if I could can.

8 Your Honor knows very well that Fowler White  
9 is a very large law firm that keeps meticulous time  
10 records with regard to the services that they  
11 render. And the concept that it is impossible to  
12 reconstruct through those time records what was  
13 received, when it was received, when it was  
14 reviewed, what happened with it, who was informed  
15 of what was happening with it quite frankly is  
16 absolutely inconceivable to me; that a law firm of  
17 that size, keeping records the way it did, cannot  
18 reconstruct what went on with regard to this  
19 information.

20 THE COURT: And that's a good point. What I  
21 was going to point out earlier and I failed to do  
22 that, and I appreciate the reminder, is that I  
23 would have expected certainly in deference to the  
24 fact that Mr. Epstein was a client of Fowler White  
25 that someone from Fowler White would have had the

1 ability to weigh in somehow as to these critical  
2 issues.

3 Perhaps I'm being a bit naive when I say that  
4 having served Mr. Epstein in their capacity as  
5 counsel, it's my respectful belief that they owed  
6 an obligation to Mr. Epstein, if not this Court, to  
7 explain how and why they had access and kept these  
8 records in their possession in light of that court  
9 order and in light of this ongoing litigation. And  
10 as a matter of respect to Mr. Epstein and his  
11 ongoing legal team, to have made some type of  
12 affirmative steps to have dealt with this issue  
13 head on because of the apparent implications of  
14 same.

15 So I again want to make clear that I'm finding  
16 absolutely no fault with Mr. Link, Miss Rockenbach,  
17 Miss Campbell or anyone else from the Link and  
18 Rockenbach firm in terms of what they did, albeit  
19 in the manner in which they had to do it and the  
20 timing, unfortunately, of the matter from their  
21 perspective in having to do it, but that takes  
22 nothing away from what the Court has already  
23 remarked upon concerning the fact that now Fowler  
24 White in the representation of Mr. Epstein had  
25 these records from the inception is one of the

1 reasons for the Court's ruling.

2 MR. SCAROLA: Your Honor, may we include in  
3 the order a direction that opposing counsel is  
4 required to relinquish possession of all copies of  
5 the privileged documents to the Court under seal?

6 THE COURT: Well, the only thing that  
7 obviously has to be taken into consideration is the  
8 appellate rights of Mr. Epstein and how they're  
9 going to preserve those rights in light of the fact  
10 that the Court has rejected the last minute request  
11 for in-camera inspection for the reasons that I've  
12 already stated at length on the record.

13 MR. SCAROLA: Which is why I've suggested that  
14 they be relinquished to the Court under seal, your  
15 Honor. They can be given an exhibit number. To  
16 the extent that the appellate court finds it  
17 reasonable and necessary to examine those  
18 documents, the appellate court will have the  
19 opportunity to do that.

20 THE COURT: So you're suggesting to file with  
21 the Clerk of Court under seal the documents at  
22 issue?

23 MR. SCAROLA: Yes, sir, that's correct.

24 THE COURT: That's better stated.

25 Do you have any objection?

1 MS. ROCKENBACH: No objection, your Honor.

2 THE COURT: So stipulated.

3 MR. SCAROLA: Your Honor will recall that  
4 opposing counsel has also informed the Court on  
5 multiple occasions that backup in the preparation  
6 for this case was being provided by the Gunster law  
7 firm, and we would like a certification from them  
8 as well that no copies have been retained.

9 MR. LINK: They don't have any, Judge.

10 THE COURT: Okay. That's fine. If Mr. Link  
11 and Miss Rockenbach are representing that to the  
12 Court, I'm satisfied with that representation.

13 MR. SCAROLA: And I accept that representation  
14 as well, your Honor, but what we would like and  
15 believe we are entitled to is a list of all persons  
16 to whom the privileged documents have been  
17 disseminated. And I'm particularly concerned in  
18 this regard; that the testimony of any witness  
19 might be influenced by their improper exposure to  
20 privileged documents. So we ask that a complete  
21 list of all persons to whom those documents have  
22 been disseminated or the contents of the documents  
23 that been disseminated be provided to us.

24 And I know that Mr. Cassell has some concerns  
25 in that regard as well that he would like to

1 address with the Court. So if he may have an  
2 opportunity to speak to the Court in this regard --

3 THE COURT: That's fine.

4 Mr. Link, if you want to comment on that?

5 MR. LINK: Yeah. I think I can solve that  
6 problem very easily, your Honor.

7 The documents were within my law firm, and my  
8 client. That's it. They haven't been shown to any  
9 third parties. There's not a third-party witness  
10 for me to put on the stand. And you have ruled we  
11 can't use them. We won't use them.

12 MR. SCAROLA: Does that include Mr. Epstein?

13 THE COURT: Does what include Mr. Epstein?

14 MR. SCAROLA: Has Mr. Epstein been provided  
15 with copies of the documents or the contents of  
16 these privileged documents?

17 MR. LINK: I just said my client. My law firm  
18 and my client. And I can say legal counsel,  
19 Mr. Goldberger. So that's it.

20 MR. SCAROLA: That may require some further  
21 relief that we can address at another time.

22 And so that the record is clear, your Honor,  
23 we believe that sanctionable conduct has occurred,  
24 and we are reserving the right at a later time --  
25 but it's not something that needs to be addressed

1 now -- but we're reserving the right to address the  
2 issue of appropriate sanctions at a later time.

3 THE COURT: Thank you.

4 Mr. Cassell?

5 MR. CASSELL: Thank you, your Honor. Paul  
6 Cassell, and I'm here this afternoon, and I  
7 understand it's getting late in the day, I'll be  
8 very brief, representing three victims; LM, EW and  
9 Jane Doe. Just one housekeeping matter.

10 We have filed a motion to intervene, which is  
11 unopposed.

12 THE COURT: The only thing I need is an order.  
13 Everything else was provided but the proposed  
14 order. So if it's unopposed, then phrase it as  
15 such and I'll be glad to execute it.

16 MR. CASSELL: Thank you, your Honor.

17 Just so the record is clear, on July 19, 2010,  
18 seven and a half years ago, LM said these very  
19 documents are privileged, and on February 23, 2011,  
20 EW and Jane Doe through counsel said these  
21 documents are privileged. So the Epstein entity  
22 that is Mr. Epstein and his array of lawyers were  
23 on notice at that time that every one of these 45  
24 documents was privileged.

25 And then what happened on Friday night, March

1 was in possession of that were in violation of a  
2 court order. Mr. Scarola has used the term "stolen  
3 documents" and I think that, frankly, describes  
4 accurately the nature of the documents, although  
5 who the thief was, of course, remains to be  
6 determined.

7 So the question in front of you right now is  
8 what to do about this. Well, we know one thing.  
9 We know there's been absolutely no waiver of  
10 attorney/client privilege. How do we know that?  
11 Well, your Honor knows the Florida law very well.  
12 To be a waiver of attorney/client privilege is  
13 something that is disfavored. There has to be a  
14 clear, intentional waiver of the privilege. And  
15 how do we know there's not been a clear,  
16 intentional waiver of the privilege? Just use  
17 Mr. Link's word. Things are clear as mud. Well,  
18 if something is clear as mud, there cannot be an  
19 intentional waiver. So there's no waiver of  
20 attorney/client privilege.

21 I know the hour is late.

22 THE COURT: You don't have to feel rushed. I  
23 want to make sure that you're heard and that your  
24 clients are heard.

25 MR. CASSELL: Thank you, your Honor. We

1 2nd, was that Mr. Link put into the public court  
2 file summaries of the e-mails, quoting from them  
3 directly, and we believe that was improper. And  
4 indeed, we've heard today Mr. Link represent to the  
5 Court all we wanted was an in-camera review, but of  
6 course they wanted something more. They wanted to  
7 put those in the public court file because they  
8 knew that the cat would be out of the bag,  
9 publicity would ensue, and other damage to my  
10 clients could occur. And so I'm here this  
11 afternoon to raise what I think are time of the  
12 essence concerns about the release of those  
13 privileged materials by Mr. Epstein. When I use  
14 the term "Mr. Epstein," I'll be referring to this  
15 entity.

16 Let's be clear. There is no doubt from sworn  
17 testimony in front of the Court that on January 10,  
18 2018 agents of this law firm picked up a disk from  
19 the Fowler White law firm, and the Fowler White law  
20 firm, as you know from the ELMO, had been directed  
21 some six or seven years earlier not to retain any  
22 copies of these documents. So there should be no  
23 dispute about the circumstances right now.

24 At that time Mr. Link's law firm, Mr. Epstein,  
25 were in possession of documents that Fowler White

1 appreciate that because what we've heard shockingly  
2 this afternoon is -- let me -- I know we need to be  
3 careful with language -- let's just say an accused  
4 abuser, Mr. Epstein, the man accused of abusing my  
5 three clients, we are told has seen these very  
6 privileged documents. We're told Mr. Goldberger  
7 has seen them. We're told, of course, Mr. Link and  
8 his law firm has seen them. And of course this  
9 very large law firm, the Fowler White law firm, has  
10 seen them as well. And so the question is what do  
11 we do?

12 And we're mindful in the fact you're about to  
13 embark on what's likely to be a very time-consuming  
14 trial. So I would like to impose six remedies that  
15 we would ask you to execute today; none of which, I  
16 want to emphasize, will require consumption of the  
17 Court's time other than signing the proposed order  
18 that we will provide for you.

19 The first is -- Mr. Scarola has already asked  
20 for this and I believe obtained this, but I want  
21 the record to be clear. My clients are asking that  
22 you preclude any use of the privileged exhibits  
23 either directly, indirectly or derivatively during  
24 the upcoming trial because if someone relies on  
25 this information, for example, in asking a question

1 to Mr. Edwards or asking a question to any of the  
2 witnesses that Mr. Edwards is presenting, that  
3 could implicitly reveal privileged information.

4 THE COURT: We have all done this, so don't  
5 feel like you're alone. Are you talking about Mr.  
6 Epstein?

7 MR. CASSELL: I'm sorry. If Mr. Epstein's  
8 attorneys do that, that's the concern.

9 So, for example, if they're formulating any  
10 questions to Mr. Edwards, they shouldn't be able to  
11 use any privileged information because we're  
12 worried that that could implicitly disclose  
13 privileged communications.

14 Secondly, we would like Epstein counsel -- and  
15 that's a broad term that includes -- I've probably  
16 lost track of the different law firms, but  
17 Mr. Link's law firm, the Fowler White law firm, I  
18 believe there are several others, Mr. Goldberger's  
19 law firm, we want them all to canvass their  
20 records, canvass their e-mails, canvass their  
21 servers and tell us if they -- how did this happen?  
22 How did this happen?

23 THE COURT: You're talking about how did the  
24 Fowler White firm garner these records?

25 MR. CASSELL: Correct.

1 THE COURT: Well, I'm not sure that any of  
2 their servers are going to shed light on that.

3 MR. CASSELL: Well, it may be, for example --

4 THE COURT: I don't want to go on a fishing  
5 expedition, as you can appreciate. I don't want to  
6 exacerbate the problem; meaning, I don't want to  
7 unnecessarily delve into myriad e-mail systems to  
8 gain knowledge that is likely residing at the  
9 Fowler White firm in some form or fashion, whether  
10 it be current or former employees or otherwise. So  
11 I am not going to go to that extent at this  
12 juncture without further proof or basic proof for  
13 going in that direction.

14 MR. CASSELL: That would be our request. But  
15 there would be a broad -- you phrased it fishing  
16 expedition. We would phrase it a retrieval  
17 expedition -- to retrieve what's happened here.  
18 But at the minimum we would ask your Honor then to  
19 direct Epstein attorneys who were previously before  
20 this Court, Fowler White, to examine the  
21 circumstances here.

22 You noted that you thought there might have  
23 been an obligation for them to address the Court  
24 head on. I'm here telling you that the victims  
25 believe they, Fowler White, has an obligation to

1 address the victims head on. How did this happen?

2 THE COURT: And understandable. I was not  
3 confining the obligation of Fowler White to those  
4 entities that I mentioned. It was those entities  
5 that came to the Court's mind initially. I don't  
6 want this record to suggest I wasn't taking into  
7 account the concerns of the victims.

8 MR. CASSELL: Certainly, your Honor, I wasn't  
9 suggesting -- and this, of course, is my first  
10 opportunity -- you have always referred to building  
11 a record -- this is my opportunity to build a  
12 record as well. So we want to know how these  
13 materials were obtained.

14 The third thing we want to know is who were  
15 the materials distributed to? Mr. Scarola has made  
16 that request on behalf of his clients. I'm making  
17 that request on behalf of my clients.

18 We're told that Mr. Goldberger has seen it,  
19 we're told Mr. Epstein has seen it. We want to  
20 know who else has seen it. And this, frankly, may  
21 require looking at e-mails, looking at servers and  
22 that sort of thing.

23 I think the record should be clear that in a  
24 routine case, you might say, "Well, that's going to  
25 be too expensive." Your Honor is aware this is not

1 a routine case because I understand that two of the  
2 finest and largest law firms here in Florida are  
3 currently representing Mr. Epstein, so they  
4 certainly have the resources to search -- to  
5 accomplish the searches that would be involved to  
6 see how these materials got anywhere.

7 The fourth thing is we want an order directing  
8 Mr. Epstein not to reveal the contents of this  
9 information to anyone. We are told that  
10 Mr. Epstein has seen the information, so he should  
11 be singled out specifically for an order.

12 Fifth -- I think this has already been  
13 recovered. All copies of the documents are to be  
14 turned over under seal to the Court.

15 Sixth, we want our temporary sealing order,  
16 which we will provide later today, to be converted  
17 into a permanent sealing order. Mr. Link filed in  
18 the public court file, we believe highly  
19 improperly, information that he was on notice was  
20 privileged. And he said today he wanted an  
21 in-camera review. Well, you do not get an  
22 in-camera review when you put those very documents,  
23 or at least summaries of those very documents, into  
24 the public court file.

25 We want the Friday night filing, the notice of

1 redacted materials, to be placed under permanent  
2 seal.

3 And then the last request is just a  
4 housekeeping request. We're obviously scrambling  
5 to sort out the implications of all this. I'm sure  
6 I have missed some points that need to be made.  
7 Due to the late filing of this document, due to the  
8 public filing of the document improperly, we would  
9 like leave to be able to file a supplemental  
10 application for additional remedies after the trial  
11 concludes and after we have received information  
12 about how the documents were obtained and who they  
13 went to.

14 And so those are the requests that I make on  
15 behalf of my two clients.

16 THE COURT: All right.

17 Mr. Link?

18 MR. LINK: Yes, sir. Thank you.

19 THE COURT: Thank you.

20 MR. LINK: I'm not sure how I can be more  
21 clear about where we got the documents from. We  
22 got them from Fowler White, your Honor. I don't  
23 think that's a mystery anymore.

24 I've represented to the Court who I have  
25 shared the papers with. The Court has ruled that

1 THE COURT: Not as far as the court file is  
2 concerned.

3 MR. LINK: The court file only contains the  
4 redacted version. We have double checked that. I  
5 asked Mr. Cassell to tell me if I missed a  
6 redaction. Could it happen? Yes, it could happen.  
7 We haven't found one. If there was one that wasn't  
8 redacted, we'd be glad to redact it. But the only  
9 thing that was filed in the clerk file was the  
10 redacted version.

11 Thank you, Judge.

12 THE COURT: All right. Thank you.

13 Much of which -- or much of the relief that  
14 has been requested has essentially been taken care  
15 of I believe through the Court's prior order; that  
16 is, that the one disk containing the documents that  
17 are being sought to be introduced at trial to take  
18 to record will be permitted to be filed under seal.  
19 The sanitized redacted versions of those records  
20 I'm also ordering to be sealed in an abundance of  
21 caution just in case there may be some error, not  
22 intentional, on the part of counsel who filed those  
23 records.

24 Mr. Epstein will be barred from referring to  
25 any of those records as it relates to the documents

1 we're going to take the disks that we have and put  
2 it under seal. We'll destroy all the other copies.  
3 That's what Mr. Scarola asked for and that's what  
4 we said we would do.

5 As to the filing, I never said all I wanted  
6 was an in-camera inspection. What I said was  
7 Mr. Scarola said he would like one and I said  
8 great, let's have one.

9 Most important is this: The documents that we  
10 filed -- and there was some miscommunication with  
11 Mr. Cassell -- I want to make sure the record is  
12 clear -- we did two things: We filed redacted  
13 documents. We redacted all of the names of EW, LM  
14 and Jane Doe, as this Court has instructed. So  
15 their initials were wiped out. Mr. Cassell called  
16 me and said, "I'm looking at a document and I see  
17 their initials." What he was looking at is we  
18 served the counsel and hand delivered to the  
19 Court -- did not put it in the public file -- the  
20 unredacted documents so we would all know what was  
21 in there.

22 THE COURT: By the court, you mean --

23 MR. LINK: To you. To the judge.

24 THE COURT: -- to myself.

25 MR. LINK: Yes, sir.

1 that were gathered from Fowler White or from any  
2 other source that would have included those records  
3 that were the subject of Judge Ray's order. So  
4 it's to preclude anything coming in through the  
5 back door which wouldn't be allowed through the  
6 front.

7 Mr. Link, did you want to comment on this?

8 MR. LINK: Yes. I wanted to remind the Court  
9 we have over a hundred exhibits that were listed on  
10 that disk that are already in the court file.  
11 We've used them in depositions. So I'm  
12 wondering -- those aren't excluded.

13 THE COURT: Right. I'm not talking about  
14 those. I'm talking about the ones that have been  
15 derived from Fowler White and that have been sought  
16 to be introduced as part of the 748 or 724, or  
17 whatever this number is, or the 45 that have been  
18 claimed as privileged and have not been ruled upon  
19 and will not be ruled upon prior to trial because  
20 of the reasons that I have explained in detail  
21 earlier.

22 MR. LINK: Thank you, Judge.

23 THE COURT: Mr. Cassell, did I leave out  
24 anything else?

25 MR. CASSELL: Yes. We want to know how the

1 Epstein entities came into possession of the  
2 documents, and then we want to know where they  
3 went.

4 THE COURT: Because of the court ruling, I  
5 don't find that to be a front burner issue at this  
6 time. Please don't confuse anyone here. The  
7 Court's reference to front burner as opposed to  
8 being an issue of importance. Front burner simply  
9 means that in preparation for a trial that is  
10 actually a mere two to three business days away, if  
11 you count tomorrow, which I don't really count as a  
12 court business day because of my obligations to the  
13 Bench Bar Conference, I won't have the opportunity  
14 to really delve into that prior to trial.

15 And as Mr. Scarola pointed out, I believe,  
16 earlier, that can be done at another time. So I am  
17 certainly not going to forget that it needs to be  
18 done. But it will be ordered that it be done post  
19 trial.

20 Any other remedies that are sought as you go  
21 along -- I understand the relative late nature of  
22 these revelations; hence, you are not precluded  
23 from filing a supplemental motion.

24 I also note that you have requested attorney's  
25 fees and costs related to this endeavor, and I'm

1 reserving on that as well.

2 MR. CASSELL: But related to that is the  
3 distribution. The cat is now wandering out of the  
4 bag, so time is of the essence.

5 THE COURT: Right. And again, I think that in  
6 an abundance of caution, and I understand your  
7 concerns, but what the attorneys here recognize --  
8 and Mr. Epstein is also under this order -- is that  
9 no further dissemination is going to be made. I  
10 think that goes without saying as far as the  
11 attorneys are concerned. I've known each of them  
12 seated at counsel table for many years, as I have  
13 known Mr. Scarola and Miss Terry, Mr. Burlington,  
14 and I think they recognize that when this Court  
15 makes a statement, that it is abundantly clear that  
16 it will be enforced to the letter. I have no doubt  
17 in my mind that they will all be respectful of the  
18 court order of non-dissemination of any of those  
19 documents hence forth.

20 And Mr. Link has already represented to the  
21 Court that other than Mr. Epstein and his  
22 co-counsel, that there have been no eyes laid upon  
23 these documents. Hence, I'm accepting that  
24 representation, as Mr. Scarola has accepted those  
25 representations during the hearing as well.

1 MR. CASSELL: We haven't heard, of course,  
2 from Fowler White. Will the Court direct them to  
3 make similar representations?

4 THE COURT: I believe that I have sufficient  
5 authority to do that under these relatively  
6 peculiar circumstances. My jurisdiction, though,  
7 is somewhat limited because they have withdrawn  
8 from the case.

9 As a general blanket order I would simply say  
10 that all attorneys who have or are representing Mr.  
11 Epstein shall be subject to this order of  
12 confidentiality, of sealing and of non-  
13 dissemination of any such information that is  
14 contemplated in any of the documents that are part  
15 of the umbrella order of Judge Ray. And that would  
16 include all of the exhibits that we spoke about  
17 today and that have been filed as a matter of  
18 record.

19 MR. CASSELL: Could they also be directed to  
20 make a representation as to who they have  
21 distributed the documents to?

22 THE COURT: Mr. Link has already -- are you  
23 talking about Fowler White?

24 MR. CASSELL: Fowler White.

25 THE COURT: I don't think that I have that

1 ability.

2 MR. CASSELL: Could I be heard on that issue  
3 then? I believe that you do have -- all right.  
4 We'll deal with that later then, your Honor.

5 MR. LINK: Can I make a suggestion, your  
6 Honor, that might be helpful?

7 THE COURT: Sure.

8 MR. LINK: We now have, I think, 34 or 36  
9 boxes they delivered; I believe all the boxes they  
10 have. The disk, the original disk, we now have it.  
11 I don't know for sure, but I doubt that there's  
12 another disk that they made and kept. If the Court  
13 will instruct as part of this order that we  
14 maintain the boxes, because Fowler White wanted  
15 them back, then we will take possession of the  
16 boxes.

17 THE COURT: If you are telling me that you  
18 have authority from Mr. Epstein to retain those  
19 boxes and Mr. Epstein is essentially giving you  
20 carte blanche, you and Miss Rockenbach and  
21 Mr. Goldberger jointly, the authority to make any  
22 decisions necessary to protect his interests, that  
23 motion would be granted.

24 MR. LINK: I'm standing here with this puzzled  
25 look because I'm not sure what that means, frankly.

1 All I was trying to do is say I will preserve the  
2 documents, the original files, because I don't  
3 think there's another set of files somewhere.  
4 Fowler White had asked me to return them once we  
5 went through them, and if the Court can instruct me  
6 to hold the boxes, then I will do that.

7 THE COURT: I don't have a problem with making  
8 that instruction, so I'll leave it at that. You're  
9 speaking on behalf of your client, Mr. Epstein, as  
10 well as your own law firm, and Mr. Goldberger, I  
11 take it, as well, so I have no problem making -- in  
12 entering this order since you're current counsel  
13 for Mr. Epstein.

14 MR. LINK: Thank you, Judge. I think that  
15 will make custody easier.

16 MR. SCAROLA: Your Honor, there are two  
17 additional matters that I would hope can be  
18 disposed of in advance of the start of trial.

19 THE COURT: Sure.

20 MR. SCAROLA: One is Mr. Epstein's motion to  
21 strike Dr. Jansen, and the second is issues with  
22 regard to adverse inference. I think that both of  
23 those matters have been fully briefed.  
24 Mr. Burlington is here to present argument in  
25 response to the motion regarding Dr. Jansen.

1 want to tackle first?

2 MR. BURLINGTON: Your Honor, it's his motion.

3 MR. SCAROLA: The motion to strike Dr. Jansen.

4 THE COURT: All right.

5 MR. BURLINGTON: Unless you want me to argue  
6 both sides, your Honor.

7 THE COURT: What's the other motion?

8 MR. SCAROLA: Adverse interest, your Honor,  
9 from the assertion of the Fifth Amendment.

10 MR. LINK: Which one are we on?

11 MS. TERRY: Jansen.

12 MR. LINK: Jansen. Okay.

13 Good afternoon, your Honor. See if I can  
14 start over today.

15 THE COURT: You have done fine.

16 MR. LINK: I don't remember winning one yet,  
17 so maybe this one. I have hopes.

18 Your Honor, this is our motion to strike  
19 Dr. Jansen. And I know the Court has read the  
20 paper, so I'm going to be very brief about this.

21 We have struggled since coming before this  
22 Court in December with what this case is, because I  
23 keep saying to the Court that Mr. Edwards wants to  
24 try a defamation action, he wants to clear his  
25 name, he wants defamation-type damages, and the

1 I suggest -- your Honor has told us that we're  
2 finishing at 4:30 today -- that we allot 15  
3 minutes, seven and a half minutes per side, to each  
4 of those matters.

5 THE COURT: All right. Off the record.

6 (Discussion held off the record.)

7 MR. LINK: Your Honor, we have a motion to  
8 strike the 79 exhibits that they disclosed late  
9 after the cutoff. I think if we're going to do a  
10 goose and a gander, the Court should rule those  
11 exhibits are stricken.

12 THE COURT: Well, I have to -- I want to  
13 review that motion again since my concentration has  
14 been on the sequencing that I mentioned before.  
15 I'll be glad to deal with it prior to trial.

16 MR. LINK: I'm comfortable with your Honor  
17 ruling on the papers if Mr. Scarola is.

18 THE COURT: Well, I'd rather, since it's  
19 something of the magnitude of trial exhibits and 79  
20 in number, I'd rather have argument on the subject,  
21 to be perfectly frank with you. I appreciate your  
22 willingness to entrust the Court with that  
23 endeavor, but I think it's better to have you heard  
24 on the record.

25 All right. Mr. Burlington, which one did you

1 Court keeps rebuking me properly and saying, no,  
2 this is a malicious prosecution action. We're not  
3 going to try a defamation action.

4 Their expert that they want to put on the  
5 stand for damages has no opinion, your Honor, as to  
6 damages. Not one. He can't talk about any damage  
7 suffered by Mr. Edwards, if any. His sole opinion  
8 is that he was given defamatory statements by  
9 counsel, defamatory statements, and told to do a  
10 search to see how many times the defamatory  
11 statements hit a web page or how many people  
12 touched the web page with the defamatory statement  
13 on it.

14 So, for example, there's a newspaper article  
15 that says Rothstein and Edwards, and that magazine  
16 or that newspaper has 3,000 people that look at the  
17 newspaper. He says there are 3,000 hits. He can't  
18 tell you if one of the 3,000 people read the  
19 article, what they thought about the article, did  
20 it make any difference, did they change their view  
21 of Mr. Edwards, did they not do business with him,  
22 did they fire him?

23 He says he has no economic damages, so how  
24 does it help a jury to hear about nine million web  
25 hits when you can't point to a single person -- I

1 said, "Tell me one person, one person, Dr. Jansen,  
2 that you know read one of these articles." He  
3 said, "I can't. I have no idea."

4 The other thing that was important is he said,  
5 "I just use an average of data. I can't tell you  
6 exactly because they accumulated over months." He  
7 can't even tell us how many times this article was  
8 actually touched. All he can tell you is if I go  
9 to the Palm Beach Shiny Sheet website, on an  
10 average month 3,000 people look at it. So how can  
11 that help the jury from a damages expert determine  
12 whether the filing of this malicious prosecution  
13 action caused Mr. Edwards any damage?

14 Thank you, Judge.

15 THE COURT: All right. Thank you.

16 Mr. Burlington?

17 MR. BURLINGTON: I'm Phil Burlington, here on  
18 behalf of Brad Edwards.

19 This determination comes down to four  
20 questions. First, is the expert qualified? That's  
21 not being challenged.

22 The suggestion that he cannot give opinions on  
23 damages ignores the nature of the damages for which  
24 case law is clear, which includes reputational  
25 damages, shame and humiliation. They have

1 would require, of course, months of trial to pull  
2 people in. But that's not our burden.

3 THE COURT: Right. And we're not looking at a  
4 defamation case from the standpoint of publication,  
5 where publication is really part of it. So that's  
6 not what is being sought here in terms of the  
7 expert testimony, as I understand it.

8 MR. BURLINGTON: Well, we're seeking to prove  
9 the dissemination, as we would in a defamation  
10 case.

11 THE COURT: Well, dissemination and recognized  
12 or acknowledged publications are two different  
13 things is what I'm trying to say. I'm essentially  
14 agreeing with you, I think, in the sense that  
15 there's no need to prove publication.

16 When I say "publication," I'm talking about  
17 the consumption of that information by another  
18 party and that party's -- and the effect on that  
19 listener, or the effect on the person who agreed  
20 with that material. You're speaking only to the  
21 issue of dissemination.

22 MR. BURLINGTON: The Browning case says that  
23 the two primary factors in determining reputational  
24 damages are the gravity of the false allegations --  
25 and here we have a young, talented trial lawyer who

1 acknowledged shame and humiliation as an element of  
2 damage. We've cited on page 6 of our response  
3 five Florida cases. Two of them, Florida Supreme  
4 Court cases, make it very clear reputational  
5 damages are a valid element of a malicious  
6 prosecution case.

7 So how do you monetize -- how does the jury  
8 monetize the damage that has been suffered by my  
9 client? We've cited cases, and there are cases we  
10 rely on from outside the jurisdiction, but it's  
11 clear from the many Florida cases we cite this all  
12 arises from the common law, and malicious  
13 prosecution is described many times as an ancient  
14 cause of action, so it's all developed by the  
15 common law. So reliance on foreign jurisdictions  
16 is not unusual, especially when it's consistent  
17 with Florida law.

18 But the clearest discussion is in a case  
19 called Browning, which says that in reputational  
20 damages, which are particularly hard to prove, and  
21 there's no case that I've ever read where in a  
22 malicious prosecution case a plaintiff was put to  
23 the burden of bringing in an individual who said,  
24 "I didn't send my case to this lawyer because I  
25 heard he was accused of a crime." That, of course,

1 is being accused not only of heinous crimes, but  
2 heinous crimes involving undermining the judicial  
3 system. And then the second factor noted in  
4 Browning, and it's cited in other cases, is the  
5 degree of exposure of the false allegations.

6 And I've cited multiple cases in my brief that  
7 say that when courts have evaluated the  
8 excessiveness of a malicious prosecution award, one  
9 of the critical considerations is the degree of  
10 exposure of the false allegations. And this is how  
11 we are doing it in the Internet age.

12 If we were 30, 40 years ago and this was done  
13 and let's say it was only exposed in this area of  
14 the country, Palm Beach County, Broward, Miami, we  
15 would come in with the newspaper's circulation to  
16 give the jury some idea of the exposure. That  
17 doesn't really have much probative value in the  
18 Internet age.

19 And Dr. Jansen is undisputedly qualified,  
20 probably more than anybody, to do this, and he  
21 explained how conservative his analysis was. And  
22 he's not going to tell the jury that the nine  
23 million six hundred hits means that nine million  
24 six hundred thousand people read this story and now  
25 believed that Brad Edwards is a criminal, and so

1 forth and so on.

2 And one of the factors here is a very well-

3 recognized principle of the Bigelow case, which is

4 a U.S. Supreme Court case, that says that one of

5 the fundamental principles of justice is that if a

6 defendant engages in wrongful conduct that creates

7 uncertainty as to damages, that falls on them. You

8 can't put the plaintiff to what is an essentially

9 impossible burden, assuming we prove our cause of

10 action. And that, of course, is an issue that this

11 trial will be all about.

12 But they're trying to say really you can never

13 prove reputational damages without bringing in Joe

14 Six Pack off the street and inquiring of him how

15 much of a grudge he's holding against Brad Edwards

16 because of false allegations. That is simply not

17 the standard.

18 Is it helpful to the jury? Well, the jury is

19 not going to understand the complexity of

20 dissemination of information on the Internet, and

21 this witness is specifically qualified to do that.

22 So when we go through the analysis is he

23 qualified, is the issue relevant, is it helpful to

24 the jury, we satisfy those three.

25 Then we come to reasons to exclude. And the

1 The fact that that term is used not only in

2 describing certain parts of the task that was

3 assigned to Dr. Jansen or in our argument regarding

4 the nature of the damages, it's because that term

5 properly applies to false statements of fact that

6 accuse a person of criminal conduct, of being

7 insane, being untrustworthy and so forth. It is

8 not in any way a suggestion that we are bringing a

9 defamation action.

10 The reputational damages are clearly

11 recognized by the Florida Supreme Court. They have

12 been recognized as one of those intangible damages

13 for which a jury has to be given broad discretion.

14 On the other hand, they have to be given

15 parameters. And in this context, the two primary

16 ones as to reputational damages are the gravity of

17 the false allegations and the degree of exposure.

18 And that is exactly what this expert is qualified

19 to testify about. And there's been no suggestion

20 as to what confusion there would be. And so,

21 therefore, we believe we have satisfied the

22 standard, and it's your discretion regarding the

23 admission of his testimony.

24 And to strike a witness entirely is the most

25 extreme remedy that could be sought in this

1 only reason I saw raised in their motion for

2 excluding it was vague references to confusion.

3 And I don't see how there could be confusion, given

4 the clear parameters of what Dr. Jansen testified

5 to were his directions, his methodology. There was

6 terminology that he has to explain to the jury, but

7 all experts do that in complex situations. The

8 jury here would not be capable of making an

9 analysis of the degree of dissemination on the

10 Internet as a matter of their common sense.

11 THE COURT: I didn't read the motion as

12 suggesting a prior Daubert analysis being required.

13 MR. BURLINGTON: I'm sorry?

14 THE COURT: I didn't read the motion filed by

15 Mr. Link to talk about his seeking a Frye or

16 Daubert analysis.

17 MR. BURLINGTON: Correct. That's my reading

18 as well, your Honor.

19 Now, there was a little preamble, as there has

20 been on many motions here, about how this is all

21 about a defamation action, and we've cited in our

22 response the term "defamation" is a general term in

23 the English language, and we've cited Miriam

24 Webster, which is about as white bread as you can

25 get on a definition.

1 context, and we submit it is not appropriate and

2 the motion should be denied.

3 THE COURT: All right, thank you.

4 Mr. Link, you have a few minutes to rebut.

5 MR. LINK: Very briefly, Judge.

6 I think a little bit of the confusion on the

7 damages is there's really two standards. The

8 standard for damages in a malicious prosecution

9 based on lack of probable cause in a criminal

10 action has per se damages. They're assumed,

11 because if somebody makes an allegations that you

12 are a criminal in the criminal court and they have

13 you arrested, then your reputation and your

14 character are immediately impugned.

15 This is civil. In civil it requires damages

16 proximately caused. And it's not a Frye analysis,

17 it's not a Daubert analysis, it's a basic does this

18 help the jury and is it a 403 issue, which is if I

19 get on the stand and I say there were nine million

20 hits when in fact all he did was search for

21 defamatory terms given to him by counsel without

22 taking into consideration was it Mr. Edwards who

23 spoke to the press, did he do a press release, when

24 did these -- when were the -- when did the

25 dissemination take place, did anybody read them,

1 did it make any difference?

2 One of the things Mr. Edwards has told us is  
3 he has no economic damages. His law firm has made  
4 substantially more money, or himself personally,  
5 since Mr. Epstein sued him than from before.

6 So to say to the jury nine million hits sounds  
7 like nine million people are reading this. I  
8 believe that prejudice outweighs any, any value it  
9 might have, any relevance in this action, because  
10 he needs to show damages proximately caused and not  
11 just put someone on the stand to talk about hits.

12 Thank you, Judge.

13 THE COURT: Okay. I was writing as we were  
14 speaking and certainly was anticipating  
15 Mr. Burlington to state the well-known legal action  
16 that a request to strike a witness is a drastic and  
17 extreme measure reserved only in rare  
18 circumstances, especially where here we're dealing  
19 with an expert which is otherwise qualified to  
20 testify to what he's going to testify. And there  
21 being no Daubert or Frye analysis necessary, the  
22 Court would deny the motion.

23 I would point out that many of the issues that  
24 were raised by Mr. Link both in his written motion  
25 and orally certainly can be effectively dealt with

1 inference instruction based on Fifth Amendment  
2 assertions that we are requesting of the Court,  
3 which I suggest to your Honor is in direct  
4 conformity with the United States Supreme Court's  
5 opinion in Baxter versus Palmigiano and also  
6 conforms with the clarification in the case of  
7 Coquina Investments versus Rothstein.  
8 Interestingly, a matter related to the Ponzi  
9 scheme.

10 And those two cases together stand for the  
11 basic principle that you may not base civil  
12 liability solely upon the assertion of a Fifth  
13 Amendment privilege. But if a defendant confronted  
14 with evidence against him in the context of a civil  
15 case refuses to answer questions that are relevant  
16 and material to that civil case, then drawing an  
17 adverse inference based upon Fifth Amendment  
18 assertion is not required, but is permitted.  
19 That's exactly what this instruction says.

20 Your Honor is well aware of the broad array of  
21 questions to which Mr. Epstein has refused to  
22 provide answers, and it is of particular  
23 significance that those refusals occurred in the  
24 context of efforts to obtain discovery on the claim  
25 that Mr. Epstein himself asserted.

1 on cross-examination. But the core aspect of the  
2 Court's ruling today is that reputational damages  
3 and damages for humiliation are difficult to  
4 demonstrate to a jury, and the manner in which the  
5 plaintiff chooses to go about presenting that  
6 testimony, in this Court's view, is reasonable in  
7 part to Dr. Jansen's proposed testimony. So again,  
8 that motion is respectfully denied.

9 The next issue.

10 MR. LINK: Judge, I think that's 0 for 5.

11 THE COURT: I don't keep score. Never have  
12 and never will. I know you say it in gest, and I  
13 allowed it the last time without a mention, but  
14 repeating it is inappropriate.

15 MR. LINK: Judge, I'm sorry. It was not meant  
16 to be inappropriate.

17 MR. SCAROLA: Your Honor, the next issue  
18 before the Court relates to the plaintiff's  
19 entitlement to an adverse inference instruction  
20 arising out of each of those circumstances where  
21 Jeffrey Epstein has asserted his Fifth Amendment  
22 right to remain silent. The primary objection to  
23 the entitlement to an instruction really related to  
24 the content of the instruction.

25 And I have handed your Honor the adverse

1 He filed a lawsuit intending not to provide  
2 any discovery with respect to the claims that he  
3 made and, carrying through on that intention,  
4 refusing to provide any discovery on those claims  
5 that he made. Under those circumstances, an  
6 adverse inference instruction is particularly  
7 appropriate.

8 I might also point out to the Court that there  
9 is a basic principle of law relating to admission  
10 by silence. Separate and apart from Fifth  
11 Amendment concerns, if someone is confronted with  
12 accusations under circumstances where they have in  
13 this case not only a right but an obligation to  
14 speak up in response to those accusations and they  
15 fail to say anything, that accounts to an admission  
16 by silence.

17 So based upon those two very fundamental  
18 principles, the U.S. Supreme Court recognition, the  
19 Fifth Amendment protections do not apply in the  
20 context of civil litigation based upon the basic  
21 principle of admissions against silence, admission  
22 of a party opponent by silence.

23 We ask the Court approve this proposed  
24 instruction and permit us to comment upon  
25 Mr. Epstein's assertion of the Fifth Amendment

1 privilege in the context of this civil litigation  
2 in each context in which those assertions were  
3 made.

4 So it relates to his assertion of the Fifth  
5 Amendment privilege with regard to the elements of  
6 the claim that he brought against Bradley Edwards,  
7 it relates to his assertion of Fifth Amendment  
8 privilege with regard to all questions relating to  
9 his economic circumstances, it relates to his  
10 assertion of the Fifth Amendment privilege in every  
11 context in which he has asserted that privilege.

12 Thank you, sir.

13 THE COURT: Thank you.

14 Mr. Scarola, the reference to Florida standard  
15 jury instruction 301.11, am I going to find this  
16 there?

17 MR. SCAROLA: What you're going to find there,  
18 your Honor, is a spoliation instruction. And what  
19 we've done is we have adopted the spoliation  
20 instruction, which is the closest standard in  
21 jury -- closest standard jury instruction to these  
22 circumstances. That is not an adverse inference  
23 instruction based upon Fifth Amendment. No such  
24 standard jury instruction exists.

25 THE COURT: Well, I didn't think so. And

1 the Fifth Amendment, refuses to answer questions  
2 when evidence is offered against him which is  
3 relevant to the case, end quote. I don't think  
4 that's an accurate statement of the protection  
5 mechanism.

6 MR. GOLDBERGER: I bracketed that myself, your  
7 Honor, in the instructions Mr. Scarola gave me.  
8 And my concern may be a little different than the  
9 Court.

10 Whether that's accurate or not, I don't want  
11 this jury to be thinking well, the right against  
12 self-incrimination applies in a criminal case and,  
13 therefore, he's guilty of everything that they're  
14 trying to get an adverse inference on. There  
15 simply is not a connect there. I don't know why we  
16 need to mention anything about a criminal case in  
17 this jury instruction other than Mr. Epstein under  
18 the United States Constitution cannot be compelled  
19 to provide evidence against himself in a criminal  
20 proceeding, period.

21 And then, you know, and the guilt of a crime  
22 may not be inferred from the exercise of the Fifth  
23 Amendment right to remain silent, that's confusing,  
24 your Honor, and it's just going to inject criminal  
25 issues into this civil trial, and I think it's just

1 thank you for that clarification.

2 I'm surprised that there really aren't more  
3 cases that deal with this instruction in a civil  
4 context. And no Florida cases that you're aware  
5 of?

6 MR. SCAROLA: Coquina is a Florida case, your  
7 Honor.

8 THE COURT: Well, it's a Federal District  
9 Court case, not a Florida appellate court case,  
10 which would be binding on this Court.

11 All right. Counsel for Mr. Epstein?

12 MR. GOLDBERGER: Now I get to stand.

13 Good afternoon. Jack Goldberger on behalf of  
14 Mr. Epstein.

15 Your Honor, as a general statement of the law,  
16 Mr. Scarola is correct.

17 THE COURT: Let me tell you where I have some  
18 issues, Mr. Goldberger, with this. And Mr. Scarola  
19 can speak to it as well, now that I understand its  
20 origination.

21 The first sentence I don't really have a  
22 problem with. The second sentence is where I have  
23 a problem. It says, quote, However, the protection  
24 that applies in a criminal proceeding does not  
25 apply in a civil lawsuit when a person, based upon

1 not necessary to the instruction that Mr. Scarola  
2 is seeking that this Court give to this jury.

3 And then the second sentence, your Honor,  
4 address, However, the protection that applies in a  
5 criminal proceeding does not apply in a civil  
6 lawsuit when a person, based on the Fifth  
7 Amendment, refuses to answer questions. And I know  
8 where the Court is heading because that requires a  
9 balancing test at this point.

10 Judge Crow, by the way, your Honor, back in  
11 November of 2013 addressed this very issue in an  
12 order that he entered. And I'll quote from it.  
13 This is Order on Counter-plaintiff Bradley Edwards'  
14 Motion to Determine Status of Punitive Damage  
15 Discovery and Applicability of Adverse Inference.  
16 And in that order, your Honor, your predecessor  
17 judge, Judge Crow, stated, "The counter-plaintiff,  
18 Bradley Edwards" -- I'm sorry -- "The  
19 counter-plaintiff Edwards' request for jury  
20 instructions adverse inference instruction is  
21 deferred until the time of trial. And at the time  
22 of trial, upon specific analysis of the specific  
23 questions and answers, including those propounded  
24 in discovery, the Court will determine whether an  
25 adverse inference instruction will or will not be

1 given."

2 So I think what Judge Crow meant in 2013 is  
3 that you can't determine what the instruction is  
4 going to be until such time as you hear the  
5 question, and then you must first do a 403  
6 analysis.

7 Well, first you must determine whether it's  
8 relevant, then you have to do a 403 analysis, then  
9 you have to decide whether under that 403 analysis  
10 and respecting the sanctity of an invocation of the  
11 Fifth Amendment privilege, whether an adverse  
12 inference instruction is appropriate.

13 So for Mr. Scarola to simply ask you at this  
14 point to have a blanket instruction to give to this  
15 jury every time -- based on every time Mr. Epstein  
16 invokes his Fifth Amendment privilege I do not  
17 believe is a correct statement of the law. And I  
18 would ask the Court to follow Judge Crow's order,  
19 where he said I'm going to do it on a  
20 question-by-question basis.

21 THE COURT: Well, a couple things. One is,  
22 again, presuming, without knowing, what was going  
23 through Judge Crow's mind at the time, but I would  
24 think that the likely contemplation was that by the  
25 time this case got to trial, whether it was in

1 my rulings relative to the Fifth Amendment issue  
2 that I've already reviewed -- I'll be glad to  
3 review a proposed instruction that you and your  
4 team prepared.

5 So at this time -- again, I'm going to give  
6 the instruction. An instruction. The instruction  
7 is still up in the air in terms of the wording.

8 I'm comfortable with actually the first  
9 sentence, I'm comfortable with the second  
10 paragraph. It's the second sentence in the first  
11 paragraph that will need to be changed.

12 MR. SCAROLA: May I suggest a language change,  
13 your Honor, because I think I understand --  
14 although your Honor has not articulated the  
15 concern, I think in rereading that second sentence,  
16 I understand how it could be of concern. The Fifth  
17 Amendment --

18 THE COURT: The concern potentially is the  
19 blanket statement that protection that applies in a  
20 criminal proceeding does not apply in a civil  
21 lawsuit.

22 MR. SCAROLA: Yes, sir. I understand that.  
23 What I suggest for consideration by the Court and  
24 opposing counsel, instead of the instruction  
25 reading, "However, the protection that applies in a

1 2014, '15 and now '18, Mr. Epstein's criminal  
2 issues would have been behind him and that there  
3 was not at that particular juncture a need to rule  
4 on something that was probably potentially, at  
5 best, speculative. However, the time is now, so to  
6 speak, because we've gone through in painstaking  
7 detail most of those questions that the Court  
8 deemed relevant and that Mr. Epstein invoked his  
9 Fifth Amendment privilege and, therefore, the Court  
10 would find that an adverse instruction would be  
11 appropriate.

12 The language that I find fault with,  
13 particularly in the second sentence, will have to  
14 be ironed out and dealt with in a way that's going  
15 to be palatable to the Court.

16 You certainly have the right, and it is a  
17 matter of law in the civil context, that if you  
18 seek to have an instruction provided to the jury on  
19 this issue, it must be filed to preserve error.

20 Now, of course, if it was -- if it's deemed to  
21 be erroneous to give an instruction at all, then  
22 that requirement would be obviated. However, if  
23 you are seeking an order with the Court's stated  
24 intent that one will be given -- because as far as  
25 the Court is concerned, it is necessary based upon

1 criminal proceeding does not apply," it should  
2 read, "However, the prohibition against drawing an  
3 adverse inference that applies in a criminal  
4 proceeding does not apply in a civil lawsuit,"  
5 et cetera. That's the part that does not apply.

6 You still have your Fifth Amendment  
7 protection; however, you don't have protection  
8 against an adverse inference. That's what I  
9 intended to say. It's not said as clearly as it  
10 should be, so I suggest that the language read,  
11 "However, the prohibition against drawing an  
12 adverse inference that applies in a criminal  
13 proceeding does not apply in a civil lawsuit,"  
14 et cetera.

15 MR. GOLDBERGER: Your Honor, I accept what Mr.  
16 Scarola is trying to clarify, but I also accept  
17 your invitation to come up with our own instruction  
18 at this point.

19 MR. SCAROLA: I just want to be sure our  
20 proposal is on the table. And that's what it is.

21 THE COURT: However, the prohibition against  
22 drawing an adverse inference -- so we'll eliminate  
23 the word "protection" and substitute "prohibition  
24 against drawing an adverse inference."

25 MR. SCAROLA: Yes, sir, which I believe is an

1 absolutely exact statement of the law.  
2 THE COURT: All right. I certainly can live  
3 with that more so than I could letting that  
4 sentence stand as it was.

5 But again, your invitation remains. I'll be  
6 glad to take into consideration any proposed  
7 instruction that you provide me, Mr. Goldberger,  
8 and your team.

9 But again, I'm ruling that adverse instruction  
10 is abundantly necessary, without question. And,  
11 therefore, one will be given.

12 But again, I will invite you to prepare one  
13 for the Court's consideration.

14 MR. GOLDBERGER: Thanks, Judge. That's  
15 obviously subject to relevancy. Obviously.

16 THE COURT: I'll put on the record for you so  
17 that there's no equivocation, I understand that  
18 your blanket objection is to giving an adverse  
19 instruction at all. That is recognized, and it's  
20 overruled.

21 However, as I said, as a substitute, my  
22 understanding of the law to be is it will be  
23 necessary now that the Court has ruled, unless you  
24 simply want to stand on your blanket objection,  
25 that an alternative instruction must be given for

1 adverse inference that applies in a criminal  
2 proceeding does not apply in a civil lawsuit,"  
3 et cetera. That's the part that does not apply.

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5 protection; however, you don't have protection  
6 against an adverse inference. That's what I  
7 intended to say. It's not said as clearly as it  
8 should be, so I suggest that the language read,  
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18 proposal is on the table. And that's what it is.

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20 drawing an adverse inference -- so we'll eliminate  
21 the word "protection" and substitute "prohibition  
22 against drawing an adverse inference."

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24 absolutely exact statement of the law.

25 THE COURT: All right. I certainly can live

1 the Court to consider so as to preserve further  
2 your objection.

3 So at this time -- again, I'm going to give  
4 the instruction. An instruction. The instruction  
5 is still up in the air in terms of the wording.

6 I'm comfortable with actually the first  
7 sentence, I'm comfortable with the second  
8 paragraph. It's the second sentence in the first  
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15 Amendment --

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17 blanket statement that protection that applies in a  
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5 instruction that you provide me, Mr. Goldberger,  
6 and your team.

7 But again, I'm ruling that adverse instruction  
8 is abundantly necessary, without question. And,  
9 therefore, one will be given.

10 But again, I will invite you to prepare one  
11 for the Court's consideration.

12 MR. SCAROLA: Your Honor, we thank you very  
13 much for your generous allotment of time today.  
14 Look forward to seeing you on Tuesday.

15 THE COURT: It's my pleasure.

16 Again, you all have done a superb job in both  
17 your written and oral presentations. I appreciate  
18 the excellent argument. As I've mentioned in the  
19 past, if I had the pleasure of dealing with  
20 attorneys of all of your caliber each and every  
21 day, I wouldn't have the headaches that I do  
22 physically and figuratively.

23 MR. SCAROLA: Your Honor, for planning  
24 purposes, are we going to be conducting an initial  
25 screening on Tuesday, having jurors fill out the

1 questionnaire and then returning for voir dire on  
2 Wednesday? The initial screening I would think  
3 would include hardship challenges and also  
4 questions with regard to anyone's familiarity with  
5 the underlying circumstances of this case.

6 THE COURT: That's something that we're going  
7 to have to discuss, and I guess the best time to do  
8 it is now. Take a little bit more time.

9 Madam court reporter, are you okay with a few  
10 more minutes?

11 THE REPORTER: Sure.

12 THE COURT: My thinking is that likely it will  
13 be necessary to preliminarily individually question  
14 the venire panels. I'm going to have a hundred.

15 MR. SCAROLA: Yes, sir.

16 THE COURT: I know that will be time  
17 consuming, but based upon the Dippolito case, and  
18 this having some parallels as far as the publicity  
19 aspects are concerned and the nature of the  
20 allegations and admissions that we're dealing with  
21 here, that it's incumbent upon the Court to  
22 individually question each of the initial venire  
23 members as to their knowledge of the individuals  
24 involved in this case. Those are my thoughts  
25 preliminarily.

1 interim order relinquishing jurisdiction on an  
2 unrelated case -- a case that goes back to 1995,  
3 actually -- and emphasize in that interim order the  
4 significance of counsel's stipulation. And so I'm  
5 here to make determinations of law, rule, where  
6 necessary, but the conduct of the trial is going to  
7 largely depend upon lead counsel.

8 So if you guys formulate a questionnaire of a  
9 preliminary manner that you can agree on, you got  
10 it. I'm more than willing to accede to that. And  
11 if that is sufficient in your view to satisfy the  
12 issue of pretrial publicity, knowledge of the  
13 circumstances, knowledge of any the participants,  
14 things of that nature that are critical to the  
15 analysis, then that's satisfactory to me.

16 MR. SCAROLA: Well, my suggestion, your Honor,  
17 is that once the group is assembled, the Court deal  
18 with hardship issues in whichever way your Honor  
19 ordinarily deals with hardship issues. Anyone who  
20 is not asserting a hardship for which they are  
21 seeking to be excused and anyone who does not  
22 express any knowledge with regard to Epstein or  
23 Rothstein, which I think are the two broad  
24 categories that we need to address.

25 THE COURT: I'm not as concerned with

1 MR. SCAROLA: May I make a suggestion?

2 THE COURT: Sure. Whoever is going to  
3 primarily conduct voir dire, why don't you come up  
4 to the podium so I can hear from you and you don't  
5 have to jump up and down.

6 MR. SCAROLA: We've proposed a juror  
7 questionnaire and I think that we're probably close  
8 in terms of the content of that juror  
9 questionnaire.

10 THE COURT: I haven't seen it.

11 MR. SCAROLA: If we're not there already,  
12 we're close in terms of the contents of that  
13 questionnaire.

14 THE COURT: I haven't seen it yet, so that's a  
15 bit of a disadvantage for me because this is  
16 something that goes unmentioned, but certainly it  
17 is my philosophy in most of the cases that I handle  
18 and all of the cases when I'm dealing with  
19 exceptionally competent lawyers, once voir dire is  
20 over, there's little that the jury hears from me.  
21 You are the ones who are going to be essentially  
22 steering this trial, and I leave it to competent,  
23 experienced attorneys when it comes to  
24 stipulations.

25 And the Fourth has reiterated that in a recent

1 Rothstein particularly now as I am, as I was -- I  
2 really -- I've never really been concerned with  
3 Rothstein.

4 MR. SCAROLA: From my perspective, we can  
5 limit it to any knowledge with regard to Epstein.  
6 And I would think this is the defense's primary  
7 concern as well.

8 THE COURT: Or Mr. Edwards. There's nine  
9 million hits, apparently.

10 MR. SCAROLA: Well, that's true. I think  
11 those names should be made known to the jurors.  
12 Anyone who recognizes those names and anyone who  
13 has a hardship remains to be individually  
14 questioned.

15 With regard to the others, they are given  
16 questionnaires and they are asked to fill out those  
17 questionnaires, and then they are excused for the  
18 balance of the day. If someone survives individual  
19 questioning, they're given a copy of the  
20 questionnaire, they fill that out, and they're  
21 excused for the balance of the day.

22 THE COURT: All right. So let me stop you  
23 there so I'm understanding. The questionnaire that  
24 you're proposing would be after the initial issues  
25 regarding knowledge of any of the participants in

1 this case?

2 MR. LINK: That's what I envisioned, your  
3 Honor. And I think Rothstein, Epstein all have to  
4 be part of that dialogue.

5 MR. SCAROLA: I don't have a problem either  
6 way.

7 THE COURT: That's fine. Certainly we'll have  
8 the opportunity to question them further. If they  
9 say they have heard of Scott Rothstein, we will be  
10 able to drill down further into that inquiry.

11 MR. SCAROLA: Yes, sir. Anyone who has not  
12 heard of any of those three people and does not  
13 have a hardship fills out the questionnaire, leaves  
14 with instructions to return the following morning.  
15 Everybody else is subject to individual voir dire.

16 THE COURT: I'm thinking about it the other  
17 way, and I'm thinking the individual voir dire has  
18 to come at the initial point of whether or not any  
19 of these people have any knowledge of the  
20 protagonists here.

21 MR. SCAROLA: Well, it would. The only people  
22 who are excused are those who have no hardship  
23 concern to raise and don't know any of the three  
24 people.

25 THE COURT: But the knowledge of the people

1 has to come first.

2 MR. LINK: It does, your Honor. You have the  
3 sequence correct.

4 THE COURT: Because then hardship becomes a  
5 non-issue.

6 MR. SCAROLA: That's fine.

7 THE COURT: Okay? It's the degree of their  
8 knowledge, if any, that will have to be dealt with  
9 first. If they have knowledge of a nature that  
10 results in an immediate cause challenge, then we no  
11 longer have to get into any of the other issues.

12 MR. SCAROLA: But does your Honor envision two  
13 separate individual voir dire's?

14 THE COURT: No.

15 MR. SCAROLA: So you would want to identify  
16 everybody who has knowledge and everybody who is  
17 claiming a hardship.

18 THE COURT: Has knowledge of a  
19 disqualification nature. And if the grammar is  
20 incorrect, forgive me for the late hour.

21 So, yes, it would be only those who would  
22 be -- who would have knowledge that would subject  
23 them to disqualification.

24 MR. SCAROLA: Yes, sir.

25 THE COURT: After that, I see no issue because

1 I have done it before and have had remarkable  
2 results using now Chief Judge Gerber's, then Judge  
3 Gerber here in the Circuit Court, his voir dire  
4 colloquy on hardship. It's excellent. And it is  
5 one that I've had very, very good success  
6 utilizing. And I have done it in a group. And the  
7 group setting is actually better.

8 MR. SCAROLA: I agree that needs to be done in  
9 the group.

10 The bottom line is that those who survive the  
11 initial screening process either because the  
12 screening process is not necessary for them or they  
13 have come in, been individually questioned and they  
14 still qualify, those people all fill out a juror  
15 questionnaire before they leave for the day and  
16 they're instructed after filling out the  
17 questionnaire to return the following morning.

18 THE COURT: What are you envisioning -- what  
19 are you both envisioning on this questionnaire?

20 MR. SCAROLA: All of the basic information  
21 that takes a long time to gather on an individual  
22 basis that we won't need to gather individually;  
23 demographic information, marital status, job  
24 history --

25 THE COURT: So you think it would be better

1 with 100 -- let's use 80 as a round number -- 80  
2 people -- it would be better -- and, Mr. Link, I  
3 want your thoughts on the subject, too.

4 MR. LINK: Yes, sir.

5 THE COURT: It would be better to give them  
6 the questionnaire, have them fill it out in our  
7 presence and then dismiss them for the day so that  
8 you all could evaluate this information, as opposed  
9 to going through the standard questionnaire that I  
10 have here, which is one we all use with demographic  
11 information, the name, place of domicile,  
12 occupation, marital status, spouse's occupation,  
13 adult child occupation, prior jury service, parties  
14 to any pending or past law suits, similar criminal,  
15 knowing anyone in the courtroom -- we'll basically  
16 take that out of the equation -- and can you and  
17 will you be a fair juror in the case?

18 MR. SCAROLA: Yes. We include all that  
19 information. We request some additional  
20 information as well. They fill out the  
21 questionnaires, the questionnaires are gathered,  
22 multiple copies are made, the Court has one, each  
23 side has a copy or more, if they choose to order  
24 them, and we then have a chance to look at them  
25 overnight and come back the following day and focus

1 our voir dire on those questions that need to be  
2 asked.

3 THE COURT: I'd like to reserve my right to  
4 ask the fairness question, so I don't want that  
5 included in the questionnaire.

6 MR. SCAROLA: That's fine.

7 MR. GOLDBERGER: Just procedurally, your  
8 Honor, I just did this in a case recently in this  
9 circuit, and the procedure requested by Mr. Scarola  
10 is close to what we did.

11 After the individual got through, they  
12 survived the cut, they then filled out the  
13 questionnaire, actually down in the jury assembly  
14 room. They collected the questionnaires for us,  
15 they gave us the copies overnight, and we came back  
16 the next day, and it worked pretty well.

17 THE COURT: Okay. So that will be fine. So  
18 what we'll do on Tuesday is the 100 people that  
19 will be assembled -- we'll be doing jury selection  
20 in 11A, so report there at 9:30 on Tuesday  
21 morning -- we will go ahead and individually speak  
22 to the jurors outside the presence of the  
23 remainder. I don't want to do it with the white  
24 noise. As I said, that would be headache producing  
25 within minutes.

1 pointed out and always keep in mind the cost to  
2 summon people to jury service is extraordinarily  
3 high, and so we don't want to waste the taxpayers'  
4 money in that respect as well.

5 All right. So again, I want to thank and  
6 commend each of you for your presentations today,  
7 all that participated either directly or indirectly  
8 in the presentation of all of your materials.  
9 Thank you to our courtroom personnel, thank you to  
10 our staff attorney, who's been assisting me. And I  
11 wish you all a pleasant evening.

12 MS. ROCKENBACH: Your Honor, you almost got  
13 away. I just have a proposed order on the motion  
14 to stay that your Honor denied earlier, if I can  
15 approach. I gave a copy to Mr. Scarola just a  
16 moment ago.

17 THE COURT: Yes. What you can do tomorrow on  
18 the substantive motions -- I'll be at the Bench Bar  
19 Conference and you have my permission to track me  
20 down. Our schedules are posted, so you'll know  
21 where I'll be. But I'll be doing the civil  
22 presentations during the afternoon. There's two of  
23 them. So I'll be able to be reached there.

24 MR. SCAROLA: Thank you very much, your Honor.

25 THE COURT: Thank you again. Have a great

1 MR. SCAROLA: Easiest is just go into the jury  
2 room.

3 THE COURT: I think that's the best way to do  
4 it.

5 And you'll individually question each of the  
6 panel after I have introduced everyone, after I've  
7 had the opportunity to make them as comfortable as  
8 possible and to explain what we're doing and why --  
9 not why we're doing it, because I don't want to  
10 hint at anything -- some may recognize the name  
11 right off the bat -- but indicate to them that we  
12 have agreed that we will question each of you  
13 individually so as to find out only preliminary  
14 information concerning the matter at hand, and  
15 leave it pretty much at that.

16 And then we'll go over with them if they have  
17 any knowledge of Mr. Edwards, Mr. Epstein or the  
18 Rothstein matter. And I think that's the better  
19 way to do it.

20 Obviously, the reason for my doing it, even  
21 though it has not come under attack or objection,  
22 is because I don't want the entire 100 people to be  
23 tainted by one person spouting something that may  
24 be of the nature that could arise here. So to  
25 avoid that operation -- and, you know, it should be

1 rest of the week. Thank you again to our courtroom  
2 personnel. We'll be in recess.

3 (Thereupon at 4:50 p.m., the hearing was  
4 concluded.)

C E R T I F I C A T E

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THE STATE OF FLORIDA,        )  
COUNTY OF PALM BEACH.        )

I, Elaine V. Williams, Registered Professional Reporter, State of Florida at large, do hereby certify that I was authorized to and did report the above hearing at the time and place herein stated, and that it is a true and correct transcription of my stenotype notes taken during said hearing.

I further certify that I am not attorney or counsel of any of the parties, nor am I a relative or employee of any attorney or counsel of party connected with the action, nor am I financially interested in the action.

The foregoing certification of this transcript does not apply to any reproduction of the same by any means unless under the direct control and/or direction of the certifying reporter.

IN WITNESS WHEREOF, I have hereunto set my hand this 9th day of March, 2018.

\_\_\_\_\_  
Elaine V. Williams  
Notary Public in and for the State of Florida  
My Commission Expires 03/27/21  
My Commission #GG 72248

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