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IN THE CIRCUIT COURT OF THE  
FIFTEENTH JUDICIAL CIRCUIT, IN  
AND FOR PALM BEACH COUNTY, FLORIDA  
Case No. 502009CA040800XXXMB

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: 10:07 a.m. - 12:08 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:

Sonja D. Hall  
Palm Beach Reporting Service, Inc.  
1665 Palm Beach Lakes Boulevard, Suite 1001  
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[REDACTED]

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

3

1 THE COURT: Good morning. Have a seat.  
2 Thank you.  
3 Needless to say the recent barrage, as  
4 opposed to flurry, of activity that has  
5 transpired is of extreme consternation to  
6 the court. It has caused me to have to  
7 engage in an inordinate amount of time to  
8 the exclusion of other matters that needed  
9 my attention.  
10 While the Court understands the gravity  
11 of the issues that have transpired, it is  
12 with extreme consternation and concern that  
13 they have transpired on the eve of trial, a  
14 trial that has already been continued once,  
15 matters that could have been avoided had  
16 timely action been taken. And the burden on  
17 the Court to try to get through what would  
18 be approximately four feet of documents is  
19 extensive and onerous. I have done the best  
20 that I can to go through the materials, and  
21 I had some assistance, which I appreciate,  
22 from one of our staff attorneys, in trying  
23 to simply wade through the extensive,  
24 complicated, and in many situations, years'  
25 old documents, some that go back almost a

4

1 decade in terms of their age, and much of  
2 which I'm reviewing for the first time.  
3 So it's against that backdrop we will  
4 proceed. We will hear the motion filed by  
5 Epstein to remove the case from the trial  
6 docket relative to Florida Rule of Civil  
7 Procedure 1.440 first.  
8 MR. SCAROLA: Good morning, Your Honor.  
9 With the Court's permission, believe it or  
10 not, there is one agreed matter that we  
11 would ask the Court to address first.  
12 I would like to introduce to Your Honor  
13 University of Utah Law Professor Paul  
14 Cassell, former Federal Judge Paul Cassell,  
15 who will present that matter to the court.  
16 MR. CASSELL: Good morning, Your Honor.  
17 Since this is an unopposed motion, it will  
18 just take 10 seconds to present.  
19 I'm here pro hac vice, which I'm not  
20 sure the Court is concerned about. We do  
21 have a motion to seal the pleading and  
22 related emails. It's unopposed. We ask  
23 that it be granted. Temporarily sealed  
24 until you reach a ruling.  
25 THE COURT: That's fine. I will need

5

1 an order in that regard, please.

2 All right, Ms. Rockenbach.

3 MS. ROCKENBACH: Thank you. May it

4 please the Court. Good morning.

5 Your Honor mentioned the barrage that

6 the Court has received. And it's the exact

7 words that I have on the top of my yellow

8 pad to describe the email flurry that has

9 occurred within the last four days, which

10 have truly made me sick. I could not wait

11 for this hearing to occur because of the

12 fact that I know this Court does not need

13 any more paperwork. You need to see the

14 attorneys and understand the chain of

15 evidence and how it was reprehensible that

16 either I or my law partner has been accused

17 of stealing documents. That has made me

18 sick.

19 So I look forward to discussing the

20 privileged nature of the documents. And I

21 thank Mr. Cassell for being here today.

22 Your Honor, this is Mr. Epstein's

23 motion to remove this case from the trial

24 docket. It was prompted by Mr. Edwards'

25 motion to separate the trials, which was

6

1 filed on Friday, I believe, for the first

2 time identifying that the fact that the

3 default that Mr. Epstein has against

4 Mr. Roth was on the original complaint and

5 it no longer applied.

6 Mr. Edwards pointed out to this Court

7 and to Mr. Epstein -- he is absolutely

8 correct -- that Mr. Epstein's operative

9 complaint is the Second Amended Complaint to

10 which there is no default.

11 What rule 1.440 tells this Court to do

12 is to look at the time that Mr. Edwards

13 moved -- it's maybe a notice to set trial.

14 In this case it was a motion to set cause

15 for trial -- was the case at issue.

16 Rule 1.440 is one of the most strictly

17 complied with mandatory rules of civil

18 procedure, which has been recognized by the

19 Fourth District Court of Appeal, and it's

20 one of those rare instances when a petition

21 for writ of mandamus is appropriate when

22 it's not complied with.

23 So we need to look at the pleadings and

24 not try this case twice. This case was not

25 at issue when Mr. Edwards filed his

7

1 motion -- for the obvious reason, when he

2 filed his motion to set the case in the

3 above-styled cause of action for trial on

4 May 24th, 2017. There is no dispute.

5 And Mr. Edwards has actually pointed it

6 out, Mr. Epstein did not have a default

7 against Mr. Rothstein.

8 Contrary to what Mr. Edwards'

9 suggestion is, is to cure this issue --

10 THE COURT: Mr. Epstein did not have a

11 default against Mr. Rothstein.

12 MS. ROCKENBACH: Rothstein, thank you

13 very much.

14 Contrary to what Mr. Edwards has

15 suggested, there is no cure for a defective

16 motion to set a cause for trial. You cannot

17 cure it.

18 There are some cases that have been

19 cited. In fact, both sides. I cited Labor

20 Ready from the Fourth District Court of

21 Appeal in my motion. And I understand

22 Mr. Edwards intends to rely upon it. But

23 this was an authored decision by Judge

24 Melanie May from the Fourth DCA. And that

25 case has great language to guide this Court

8

1 on.

2 In that case Judge May wrote, "We do

3 not quarrel with those cases or their

4 holdings."

5 Your Honor, would the Court like a copy

6 of this case to follow?

7 THE COURT: Sure.

8 MS. ROCKENBACH: Thank you. May I

9 approach?

10 THE COURT: Yes.

11 MS. ROCKENBACH: I have a similarly

12 highlighted copy for counsel.

13 So in that case, the Fourth DCA has

14 said, "We don't quarrel with genuine parts

15 of prior Fourth DCA case recognizing the

16 mandatory nature and compliance, strict

17 compliance with Rule 1.440." Judge May

18 wrote, "We don't quarrel with Bennett versus

19 Continental Chemicals."

20 However, we point out that none of

21 those cases involve the case that has been

22 pending at issue for years. Those cases

23 were at issue. Meaning, they had a default.

24 They had an answer. They had a final

25 pleading. Twenty days had run. Another 30

9

1 days had run. Compliance with rule 1.440,  
2 check the box.

3 What Judge May said in this case, the  
4 Labor Ready case, there was a last minute  
5 technical amendment to the complaint. And  
6 guess what, they went to trial. It was  
7 waived.

8 That case does not apply. Those facts  
9 do not control. What you have before Your  
10 Honor is a -- no waiver, no waiver. You  
11 have an objection that Mr. Edwards has  
12 pointed out, rightfully so, the case is not  
13 at issue.

14 What I filed with the Court  
15 immediately, simultaneously with the motion  
16 to remove this case from the docket was a  
17 proper motion for default against Rothstein.

18 There is no case that supports  
19 Mr. Edwards' position to this Court about  
20 severing a case in order to retroactively  
21 make it at issue. That doesn't happen in  
22 the law.

23 The law says, in rule 1.440 in the  
24 Bennett case and the Gawker case from the  
25 Second DCA, says that this Court has to look

10

1 at May 24th -- and that is the salient date  
2 that this Court must look at -- because  
3 that's when Mr. Edwards hastily moved this  
4 case and set the above-styled caused of  
5 action for trial, May 24th.

6 To be clear, Your Honor, Mr. Edwards  
7 did not move to sever at that time. This  
8 case has been pending for some eight plus  
9 years. He has never before tried to sever.

10 He, at that time, on May 24th, instead  
11 of pointing out the lack of at issue, and by  
12 the way, you need a default, he moved the  
13 case. He didn't even move his counterclaim  
14 to set for trial, he moved the case.

15 And then further, to evidence  
16 Mr. Edwards' intent to try this case  
17 globally, main claim and counterclaim --  
18 which is appropriate, because the  
19 counterclaim arises from the main claim --  
20 he entered into a joint stipulation  
21 indicating that that's how the case is going  
22 to be tried.

23 So it was not Mr. Epstein who caused  
24 this last-minute, 11th-hour, oh, my gosh, we  
25 are not at issue, it was Mr. Edwards who

11

1 pointed it out.

2 I researched it over the weekend. And  
3 on the very next business day, as soon as I  
4 possibly could, I filed the motion to remove  
5 the case from the docket.

6 I then immediately moved to default. I  
7 have an order for the Court to sign to enter  
8 a default. Served it on Mr. Rothstein's  
9 counsel of record, Marc Nurik. And we will  
10 then be ready once this Court enters the  
11 default, and presumably either party notices  
12 it for trial in 20 days when it is then at  
13 issue, this Court can then set it no less 30  
14 days. That is the mandatory nature of the  
15 rule.

16 I regret we're here, but this is a  
17 strict compliance rule and we have to be at  
18 issue.

19 And, Your Honor, the last thing either  
20 side or this Court wants is to try this case  
21 twice.

22 THE COURT: Despite the representation,  
23 Ms. Rockenbach, that you made in your motion  
24 to continue, that Plaintiff and his trial  
25 counsel will not seek another continuance.

12

1 We will be to ready to try the case in 90  
2 days --

3 MS. ROCKENBACH: Yes.

4 THE COURT: -- quote, end quote.

5 MS. ROCKENBACH: Yes.

6 THE COURT: Why was that not pointed  
7 out to me upon a review of the docket,  
8 presumably a review of the docket, to  
9 determine whether or not there was, in fact,  
10 a need to strike the trial notice at that  
11 time, instead of gearing up, instead of  
12 spending an inordinate amount of court  
13 resources, and now taking the position that  
14 because what in essence was dilatory conduct  
15 on the part of the Epstein trial counsel  
16 team, dating back to 2011, now constitutes  
17 reason for this case to be stricken?

18 Does that not sound inequitable? Does  
19 that not sound inappropriate? Does that not  
20 sound specifically contrary to the quoted  
21 language that I have just indicated here?

22 MS. ROCKENBACH: The quoted language as  
23 you indicated, Your Honor, I made knowing  
24 that there was a default.

25 Mr. Edwards at that time never said

1 that default does not apply to the operative  
2 complaint. And I never, ever thought that  
3 it did not.

4 THE COURT: Isn't that your  
5 responsibility? Isn't that the  
6 responsibility -- before you make that  
7 statement to this Court and make the  
8 representation that in light of the fact  
9 that you guys were getting up to speed, that  
10 part of getting up to speed, would have been  
11 your responsibility to check the adequacy of  
12 the pleadings -- and as the case that has  
13 been cited -- at least one of them indicate,  
14 the responsibility would have been to file a  
15 motion to strike the case -- strike that. A  
16 motion to strike the notice setting trial or  
17 the trial order seasonably and timely so  
18 that we would not have been in this position  
19 in the first place?

20 It would seem to me that you are  
21 essentially creating the error yourselves by  
22 not doing due diligence.

23 MS. ROCKENBACH: I wish I had seen it.  
24 I knew there was a default against  
25 Mr. Rothstein, and that he was in federal

1 prison. Never before did Mr. Edwards raise  
2 this issue that he raised on Friday.

3 And by the way, Your Honor, the fact  
4 that Mr. Edwards has raised it, he is using  
5 it as an excuse to sever the trial, which  
6 does not cure the defect, and is an  
7 appropriate manner to try this case in any  
8 event.

9 Mr. Edwards is the one who pointed out  
10 the improper defect, who could have raised  
11 it much sooner.

12 Your Honor, I wish I had seen it. I  
13 wish I had seen it. And we are ready to try  
14 the case, but that's not the issue.

15 Mr. Edwards having raised the defect  
16 now, we could go through this trial, get a  
17 verdict for Mr. Epstein, and I believe we  
18 would, and then Mr. Edwards could appeal on  
19 the defect because he has raised it.

20 So there is but one action that the  
21 Court can take, and that is --

22 THE COURT: If that transpires, then I  
23 quit. Then I am resigning my position.  
24 Because if I can't trust what was written  
25 already here by you, that you -- that

1 Mr. Epstein, as the Plaintiff, and his trial  
2 counsel, will not seek another continuance,  
3 and he will be ready to try the case in 90  
4 days -- quoted language, pledging to this  
5 Court that otherwise this case is ready to  
6 go -- and now we are faced with this defect  
7 after all of the time and expense that has  
8 been made here and spent here, is really a  
9 travesty.

10 And while I say that tongue in cheek in  
11 terms of my resignation, this would -- it  
12 would be astounding to me if that was, in  
13 fact, the case.

14 MR. LINK: Your Honor, may I have  
15 permission to stand next to my partner on  
16 this?

17 THE COURT: Sure. Of course.

18 MR. LINK: Thank you.

19 Judge, I want to make sure that the  
20 record is clear. We are not asking for a  
21 continuance. The words that we gave you, we  
22 are standing by. This is not a motion for a  
23 continuance. And the words that my partner  
24 told this Court were absolutely true when  
25 she said them. They are absolutely true

1 today. This is not us not being ready.  
2 This a legal defect that cannot be cured.

3 And I apologize to the Court for where  
4 we are and what we have done. And I'm  
5 afraid we are going to spend a lot more time  
6 together on this case.

7 But I want this Court to understand  
8 that when my law firm says something, we  
9 mean it. We absolutely do. And we are not  
10 moving for continuance.

11 But this case cannot go to trial with  
12 this defect, that's just the law. But I  
13 don't want this Court to think for one  
14 second that my partner or I would ever  
15 mislead you or say something we didn't mean.  
16 I have been accused of enough of that this  
17 week.

18 THE COURT: The point that I'm  
19 making -- nobody is accusing you.

20 MR. LINK: Not you, Your Honor. I've  
21 been accused of stealing documents and a  
22 crime.

23 THE COURT: I understand.

24 MR. LINK: And that's the first time in  
25 32 years.

1 THE COURT: And I appreciate that. I  
2 understand everybody's emotions are rather  
3 high, based upon the fact that all of this  
4 has transpired in such a short amount of  
5 time.

6 But again, at the same time, as I said  
7 before, it seems to me to be highly  
8 inequitable -- and I understand your  
9 argument is legal in nature -- but highly  
10 inequitable to come before the Court and  
11 suggest that by way of dilatory conduct on  
12 the part of the Epstein trial team in not  
13 securing the technicality that we are  
14 speaking about, and that is a default  
15 against an individual who will remain in  
16 prison for the rest of his life. Who is, to  
17 my knowledge, based anecdotally, only based  
18 on anecdotal evidence, is penniless and has  
19 been disgorge of any assets that he has and  
20 that his family has, that somehow because of  
21 this technicality we're caused to put this  
22 case back and not try the case after, again,  
23 an inordinate amount of time and expense,  
24 which is in essence taxpayer money, of which  
25 this Court has been and continues to be a

1 steward of those expenses and time.

2 Again, coupled with the fact that it  
3 was represented to this Court that there  
4 would be no further delays and that the case  
5 would be ready to try. That tells me and  
6 that represents to me, that counsel has done  
7 their due diligence.

8 Part of the motion said, "We have heard  
9 the Court loud and clear, now we" -- Link  
10 and Rockenbach -- "are on the case, with  
11 support from the Gunster firm, and we will  
12 not allow the same type of conduct that  
13 transpired earlier, which the Court was  
14 critical of, happen again."

15 That pledge to this Court means  
16 something to this Court. That means that  
17 the docket has been assiduously reviewed,  
18 and that everything else, short of gearing  
19 up for trial on the substantive issues that  
20 are before this forum, have been resolved,  
21 rectified, and that certainly we are not  
22 going to be reaching back seven years on a  
23 technicality to somehow thwart the efforts  
24 of the Court in trying to moved forward on  
25 behalf of both sides to resolve a case that

1 has drawn a significant amount of public  
2 interest and that has been pending for --

3 MR. LINK: Nine years.

4 THE COURT: Nine years is too simple.  
5 Three thousand and thirteen days, as of  
6 today.

7 MR. LINK: Yes, sir.

8 Your Honor, if I may. Because what is  
9 really important to me, more than anything  
10 in this case, is our reputation. And I want  
11 this Court to understand that we are not  
12 moving for a continuance.

13 THE COURT: I didn't say that was your  
14 position, which is why there is a  
15 frustration here.

16 Continuances are discretionary under  
17 the law. I have wide discretion. The Rule  
18 of Judicial Administration of this state --  
19 and I do my best to follow them. And you  
20 have probably heard me at 8:45s make this  
21 statement, at least if not expressly,  
22 impliedly, that the trial courts of this  
23 state shall have a firm continuance policy.

24 Now, while that may not be popular  
25 amongst the bar when the Court enforces that

1 rule, it is nonetheless a rule of the  
2 Florida Supreme Court, and I do my best to  
3 follow the law, despite popularity concerns,  
4 of which I have none.

5 MR. LINK: And we appreciate that, Your  
6 Honor.

7 THE COURT: So --

8 MR. LINK: Sorry, I thought you were  
9 done.

10 THE COURT: I am not exonerating the  
11 movant here, by any means. You're the first  
12 one --

13 MS. ROCKENBACH: The movants being  
14 Edwards or Epstein?

15 THE COURT: I'm talking about Edwards.  
16 The movant setting the case for trial.

17 MS. ROCKENBACH: Understood.

18 THE COURT: Because Edwards has the  
19 same responsibility to the Court, to this  
20 community, to the taxpayers, to the public,  
21 to my constituency, to assiduously review  
22 the docket, to ensure that the notice is  
23 being provided in accordance with rule  
24 1.440.

25 So by no means am I exonerating anyone

1 here. It's just, again, a cumulation of  
2 having to go through what we have gone  
3 through together. Up to now, what I have  
4 tried to maintain, a civil, professional and  
5 efficient atmosphere despite the nature of  
6 the case, despite pejorative comments that  
7 were made earlier, which the Court has  
8 indicated will not be tolerated, and that  
9 has been followed carefully by all  
10 concerned, and I appreciate that very much.

11 But here we are. I am familiar with  
12 the law. I am familiar with the statute  
13 -- strike that.

14 I am familiar with the rule. I am  
15 familiar with the comments to the rule. I  
16 am familiar with the case law pertaining to  
17 the rule.

18 I will allow you time for rebuttal, if  
19 needed.

20 MS. ROCKENBACH: Thank you, Your Honor.

21 MR. LINK: Judge, thank you for letting  
22 me come up here.

23 THE COURT: Mr. Scarola, again, I share  
24 my frustration with you and the Edwards'  
25 legal team, as well, as far as this

1 conundrum.

2 It is disappointing that a firm of your  
3 stature, an attorney of your stature, of  
4 which I have an abiding respect for all of  
5 those who are serving their clients in this  
6 case, that, again, the docket was not  
7 assiduously combed, and we are left here  
8 today with the very real possibility of this  
9 case not being tried as scheduled.

10 Your response, please.

11 MR. SCAROLA: Yes, sir. Your Honor,  
12 let me first of all point out that rule  
13 1.440 only permits a party to notice a  
14 matter for trial once at issue.

15 And at the time our notice was filed,  
16 we were not a party to the case that was  
17 pending against Mr. Rothstein. And quite  
18 frankly, had no concern about that case. It  
19 was simply not a matter that we cared about,  
20 and quite frankly believed, for the reasons  
21 that Your Honor has referenced, that it  
22 would never really be tried.

23 This is a defendant who has absolutely  
24 no ability whatsoever to ever respond to a  
25 judgment against him.

1 And our concern with regard to  
2 Rothstein arose when we were informed of the  
3 witnesses that were intended to be called  
4 ostensibly in the case against  
5 Mr. Rothstein, which was a damage only claim  
6 for a conspiracy to commit abuse of process,  
7 a claim, which if it had been defended,  
8 would have been thrown out because there is  
9 no tort because of the litigation privilege  
10 for conspiracy to commit abuse of process,  
11 and there could not possibly, under any  
12 conceivable version of the facts, ever be a  
13 claim for damages by Mr. Epstein in  
14 connection with that.

15 Nonetheless, we are told that there are  
16 going to be -- there's going to be testimony  
17 from Mr. Rothstein -- excuse me. From  
18 Mr. Epstein's victims in that portion of the  
19 case, that Mr. Edwards is going to be called  
20 in that portion of case.

21 And what became apparent to us is, that  
22 an effort was going to be made to use the  
23 rouse of a claim against Rothstein as to  
24 which we would have no standing to object,  
25 to insert into the record information that

1 would never be admissible in the claim of  
2 Bradley Edwards against Mr. Epstein.

3 It became a particular concern to us,  
4 because once a default is entered, the jury  
5 is obliged to assume the truthfulness of the  
6 facts that are alleged in the complaint.

7 We are obviously contesting those  
8 facts. So what was going to happen if there  
9 was going to be a focus on the underlying  
10 allegations --

11 THE COURT: Against Rothstein?

12 MR. SCAROLA: Against Rothstein -- is  
13 that the same jury was going to be told, you  
14 must accept these allegations; and then they  
15 were going to be told, you can't accept  
16 those allegations. And that obviously in  
17 and of itself created a need for us to  
18 approach the Court and ask that these claims  
19 be severed.

20 We then determined that there was no  
21 valid default ever entered against  
22 Mr. Rothstein. It didn't happen. And  
23 that's not something, again, that was ever a  
24 concern to us.

25 I don't represent him. I never want to

1 represent him. I am uncomfortable about the  
2 idea of having to be involved in a trial in  
3 which I might have to be raising objections  
4 that would appear to be objections on behalf  
5 of Rothstein to what's going on in that  
6 first portion of the case.

7 So we found out about the procedural  
8 defect. Now the issue becomes, does Your  
9 Honor have the ability to address those  
10 problems? And the answer to that question  
11 is clearly yes.

12 Severance of a permissive  
13 counterclaim -- and there is no doubt about  
14 the fact that this is a permissive  
15 counterclaim -- rests within the sound  
16 discretion of the Court.

17 THE COURT: The question that I had  
18 was, in reviewing the material, is this  
19 still a counterclaim at all, albeit  
20 technically brought as same, because Edwards  
21 no longer is a defendant in the matter  
22 brought by Epstein?

23 The sole defendant, as I understand it,  
24 on a one-count issue is Rothstein.

25 MR. SCAROLA: Yes, sir. I refer to it

1 I.e., is there any law that supports  
2 the proposition that this would, in fact, be  
3 a separate action at this juncture having no  
4 technical, even legal connection, between  
5 the claim brought by Epstein against  
6 Rothstein for some type of conspiracy issue,  
7 and what is now a separate malicious  
8 prosecution claim -- albeit having its  
9 genesis in the original Epstein action --  
10 but having nothing shared at this juncture,  
11 either technically or legally, other than a  
12 case number?

13 MR. SCAROLA: Your Honor, I think that  
14 that is flawless logic. We are here to try  
15 our claim against Epstein on a fourth  
16 amended, quote, unquote, counterclaim that  
17 is really a separate action.

18 But while I understand the Court's  
19 reasoning and agree with it, we don't need  
20 to try to technically call this something  
21 other than what it was derived from, and  
22 that is a counterclaim.

23 Because the law is very clear that this  
24 Court has the discretion to sever for  
25 separate trials a counterclaim. And that's

1 as a counterclaim only because that's the  
2 procedural posturing in which it arose.

3 But, when a voluntary dismissal was  
4 taken with regard to all claims against  
5 Bradley Edwards, it's no longer a  
6 counterclaim. It's now our claim against  
7 Mr. Epstein.

8 THE COURT: And while it has its  
9 genesis in the original action filed by  
10 Epstein against Rothstein, Edwards and L.M.,  
11 the fact that simply because it has its  
12 genesis there, as I was trying to think this  
13 through among the other materials that I had  
14 to review -- and they were substantial -- is  
15 that can it not be argued that the only  
16 connection between Rothstein's claim brought  
17 against him -- strike that.

18 Epstein's claim brought against  
19 Rothstein, the only connection that is even  
20 arguable, is that, in fact, the Edwards'  
21 case had its genesis in the fact that  
22 Epstein originally brought the claim against  
23 Rothstein, Edwards and L.M., and then  
24 voluntarily dismissed the case at the eve of  
25 summary judgment.

1 the second -- excuse me -- that's the Third  
2 DCA case that we cited to Your Honor, Turner  
3 Construction Company versus ENF Contractors.

4 And let me hand -- let me hand the  
5 other copy of that to Your Honor.

6 So we can assume -- without needing to  
7 reach the argument as to whether this is or  
8 is not still a counterclaim -- we can assume  
9 that it is a counterclaim. There is no  
10 question about the fact that it's a  
11 permissive counterclaim.

12 And we are in a position, whereas the  
13 Third District Court of Appeal observed, it  
14 is within a trial judge's discretion to  
15 sever a permissive counterclaim from the  
16 main claim if there is no evidence of  
17 prejudice.

18 And I was very pleased to hear Mr. Link  
19 and Ms. Rockenbach stand before the Court  
20 and tell you, We are ready for trial.  
21 Because that's what they told you. They  
22 told you that back -- they told you they  
23 would be ready back in December, and they  
24 are telling you again, We are ready for  
25 trial. We are not asking for a continuance.

1 We only want to remove a technical defect  
2 that might have us try this case twice.

3 Well, I assure Your Honor, there could  
4 not be a clearer example of waiver on our  
5 part of any technical difficulty than I am  
6 asserting to the Court right now that could  
7 never and will never be the basis for any  
8 appellate argument on our part.

9 So, next, the Court goes on to say, "An  
10 appellate court will not interfere with  
11 procedural rulings of a trial judge, unless  
12 a party is deprived of a substantial right  
13 by the procedure employed."

14 So let's look at the procedure  
15 employed, and what the unanimous Fourth  
16 District Court of Appeal told us in Labor  
17 Ready versus the Australian Warehouses  
18 Condominium Association.

19 THE COURT: And again, the rule of me  
20 wading through these documents, if you can  
21 hand me cases as we go along, I will  
22 appreciate it.

23 MR. SCAROLA: Absolutely.

24 THE COURT: Thank you.

25 MR. SCAROLA: This is our appellate

1 court speaking through Judge May, as I said,  
2 an unanimous opinion joined in by Judge  
3 Gunther and Judge Farmer. And I am looking  
4 at the third page, the last page of this  
5 copy, Your Honor, and it's the highlighted  
6 language.

7 "This is not a case where the case had  
8 never been at issue." Nor is this. "This  
9 is not a case where the parties did not have  
10 sufficient time to prepare." Nor is this.  
11 "This is not a case where anyone was  
12 prejudiced by the technical amendments to  
13 the complaint." There they were talking  
14 about adding a punitive damage claim to the  
15 complaint.

16 "In situations where the parties have  
17 received actual timely notice of the trial,  
18 they are precluded from arguing prejudice  
19 based upon a technical violation."

20 Here we don't concede that there is any  
21 technical violation at all. But even if  
22 there were to be, the Fourth DCA says not a  
23 basis to disturb a trial court decision when  
24 there is no evidence of prejudice. And we  
25 are being told no prejudice.

1 THE COURT: Speak to me again about the  
2 issue where, in a setting such as this, if  
3 both matters were to be tried together, the  
4 position that your client would be in having  
5 to prosecute his claim and in essence try  
6 potentially try to defend Rothstein at the  
7 same time.

8 MR. SCAROLA: Yes, sir. I think that  
9 that's really clear. The allegations  
10 against Mr. Rothstein are, even in this  
11 later version of the complaint, basically  
12 identical to the allegations that were made  
13 against Mr. Edwards. It is the complaint  
14 upon which a voluntarily dismissal was taken  
15 as to Mr. Edwards.

16 So the jury is told in a default  
17 circumstance all of the allegations must be  
18 accepted as true. And the only issues that  
19 arise are issues with regard to causation  
20 and damages.

21 We are contending that there could  
22 be -- first of all we are contesting the  
23 underlying allegations. The jury is being  
24 told accept them with regard to Rothstein.  
25 You can't accept them with regard to

1 Epstein, they are contested.

2 So that's the first problem. One jury  
3 being told to assume two different things.

4 The other problem is, we are contending  
5 that there could be no damages incurred by  
6 Mr. Epstein as a result of anything that  
7 went on with regard to a Ponzi scheme in  
8 which he was not an investor.

9 We are also contending nothing about  
10 what went on at Rothstein, Rosenfeldt &  
11 Adler can form the basis for a claim because  
12 of the litigation privilege, absolute  
13 immunity of the litigation privilege.

14 So the defense -- excuse me -- the  
15 plaintiff in the Epstein versus Rothstein  
16 case begins their case by putting on proof  
17 about how Mr. Epstein was alleged to have  
18 been damaged by these absolutely immune  
19 activities.

20 What do I do at that point? I must  
21 stand up every time any of that evidence is  
22 being adduced before the jury, and I must  
23 object on the basis that this cannot apply  
24 to Mr. Edwards. I'm in the position of  
25 defending Mr. Rothstein, of objecting on the

1 causation grounds, of objecting that no  
2 injury could have been caused, of objecting  
3 on the basis that this is all absolutely  
4 privileged information. And from the  
5 perspective of the jury, I am now defending  
6 this man who is sitting in federal prison  
7 for 50 years.

8 And that simply creates extraordinary  
9 prejudice to my client. It creates  
10 confusion on the part of the jury, and it is  
11 absolutely unnecessary; and, indeed, under  
12 these circumstances procedurally precluded  
13 because there is no default against  
14 Mr. Rothstein.

15 So this Court has discretion to solve  
16 the problem. You simply sever the  
17 permissive counterclaim or the separate  
18 action, and you allow us to proceed to trial  
19 on a case that Mr. Epstein's lawyers have  
20 said they are ready to try.

21 Let's do it. Let's go to trial. They  
22 said they are ready. The Court has the  
23 ability to cure whatever obstacle  
24 conceivably exists to trying this case.

25 My client finally deserves the

1 opportunity after 3,000 whatever it is days  
2 to be exonerated publicly of the terrible  
3 charges that were lodged against him and  
4 hang out in the air and hang out in the  
5 cloud and hang out in the Internet some nine  
6 million point six hundred thousand times.  
7 We would like our day in court, sir.

8 I am pleased to answer any other  
9 questions Your Honor may have. But clearly  
10 the Court has got discretion to do what we  
11 would like you to do. Justice demands that  
12 you do what we would like you to do. Thank  
13 you, sir.

14 THE COURT: Thank you, Mr. Scarola.  
15 Mr. Link.

16 MR. LINK: Yes, sir.

17 THE COURT: As I mentioned, and I want  
18 to give you the opportunity to comment on  
19 this point.

20 In trying to think this through and  
21 rationally engage in a discussion, quote,  
22 technically and practically, I start with a  
23 proposition that the last amendment to the  
24 complaint that was filed on behalf of  
25 Epstein was solely against Rothstein on a

1 singular count.

2 MR. LINK: Yes, sir.

3 THE COURT: Clearly that was done after  
4 what was termed in quotation marks that I am  
5 using, a counterclaim filed by Edwards at a  
6 time when Edwards was, in fact, a named  
7 defendant in that particular action by  
8 virtue of Epstein's decision through  
9 counsel, presumably, to no longer include  
10 Edwards as a defendant in that action, the  
11 terminology and the trappings that would  
12 otherwise go along with a pleading entitled  
13 counterclaim would dissipate, would legally  
14 disappear, in other words, had Mr. Edwards  
15 and counsel decided to file a separate  
16 action.

17 MR. LINK: Yes, sir.

18 THE COURT: Had this case gone away in  
19 its entirety -- let's say, just for the heck  
20 of it, that Epstein decided to completely  
21 walk away from the lawsuit in its entirety,  
22 just walk away --

23 MR. LINK: Could have happen.

24 THE COURT: -- as many do, okay, there  
25 was no longer a counterclaim, it is now --

1 and has really always been, since the time  
2 that Epstein -- strike that.

3 That Edwards was no longer a defendant  
4 in the case, a separate action, no longer a  
5 counterclaim, technically or practically,  
6 because there was no pending claim against  
7 Edwards, at least as late as the second  
8 amended or whatever iteration of the  
9 complaint that was filed in September of  
10 2011.

11 MR. LINK: Yes, sir. I understand  
12 that. It's really easy. On Friday  
13 Mr. Scarola figured this out. We have had  
14 this case for nine years. His client was  
15 dismissed in 2012. Why didn't he come here  
16 in 2012 and say, Judge, this is no longer a  
17 counterclaim, I want my own suit? If he had  
18 preceded --

19 THE COURT: I don't think he needed to  
20 do that. Why did he have to make a  
21 declaration of such, when by operation of  
22 law -- again using September 11th, the last  
23 iteration of the complaint filed by Epstein  
24 against Rothstein only --

25 MR. LINK: Yeah.

1 THE COURT: -- there is no longer the  
2 trappings, the necessity of a counterclaim.  
3 There is no pending claim against Edwards by  
4 Epstein. It essentially -- it essentially  
5 morphs, then or becomes -- better stated --  
6 a separate action, because counterclaim no  
7 longer applies. It has no application  
8 whatsoever. It's a separate action.

9 The only thing that it shares now --  
10 I will give you a chance in a moment.  
11 I apologize.

12 MR. LINK: No, you're doing great.

13 THE COURT: The only thing -- the only  
14 thing that it now shares is a common case  
15 number. That's it. Okay.

16 MR. LINK: That's no longer important.

17 THE COURT: There's no longer any  
18 relationship --

19 MR. LINK: Not true.

20 THE COURT: -- Epstein versus Rothstein  
21 is separate and apart, and has absolutely no  
22 connection at this stage of the game -- now  
23 there may be some tangential things that are  
24 shared in terms of the nature of the case,  
25 and some may even suggest that if they were

1 that he has brought, albeit, again, having  
2 the genesis of the original claim, that has  
3 been dropped. But there's nothing that  
4 would have prohibited him from bringing a  
5 separate action, nothing that would  
6 prohibited severance a long time ago that I  
7 can think of, because of the fact that they  
8 no longer have any interrelationship  
9 legally.

10 Now, again, I will grant you that  
11 factually there may be some overlap. I'm  
12 not suggesting that. But from a purely  
13 legal standpoint, this separate action,  
14 there is nothing that I can think of that  
15 would necessitate these two matters to be  
16 tried together.

17 And the fact that substantial confusion  
18 could be operable here -- as argued by  
19 counsel and as written down by the Court,  
20 even before the mention of the word -- and  
21 the prejudice that would be done here, may  
22 even create a better forum for each of the  
23 parties to get their justice that they are  
24 seeking, i.e., Mr. Epstein's damages against  
25 Rothstein. I am not sure whether causation

1 both separately brought that it could  
2 constitute a transfer.

3 MR. LINK: Yes, sir.

4 THE COURT: Because it involves, at  
5 least arguably, the same transaction and  
6 occurrences that may have transpired here.  
7 It may even suggest the potentiality of  
8 consolidation. Though, on further review if  
9 it would come before me and there would be  
10 argument against it, the likelihood -- and  
11 I'm just speaking generically. I'm not  
12 suggesting how I am going to rule on  
13 anything that's not before the Court -- but  
14 arguably, it could be denied because of -- I  
15 wrote down here before Mr. Scarola mentioned  
16 it -- confusion of issues before the jury  
17 and the potential, the real potential of  
18 prejudice when you inject a convicted felon  
19 with the notoriety of Mr. Rothstein, who is  
20 sitting in prison for the rest of his life,  
21 that's made international news, that  
22 continues to be shown on CNBC -- I forget  
23 the name of the show that has to do with  
24 greed -- and what's happened now with  
25 Mr. Edwards, in terms of the separate action

1 becomes an issue or not. I think it's  
2 simply a matter of damages, but that  
3 Rothstein has the opportunity to defend  
4 himself against.

5 But Edwards, on a totally separate  
6 legal theory, and in a case that now bears  
7 no semblance to a counterclaim, has his  
8 right to seek justice in a timely fashion as  
9 well. Why not?

10 MR. LINK: My turn?

11 THE COURT: Yes.

12 MR. LINK: Okay. So many things to  
13 say.

14 First, Judge, you nailed it. In 2012  
15 Mr. Scarola could have come to this Court  
16 and said all the things you just said.

17 THE COURT: What is preventing him from  
18 having it now? What's preventing it from  
19 happening now? Why can't I follow what I  
20 perceive to be, as often is the case, as I  
21 mentioned this probably before, the  
22 practical nature of a judge like Judge May  
23 from the Fourth District of Court of Appeal,  
24 taking the bull by horns, as she often does,  
25 has the gift of being able to clarify and

1 distill often very complex matters, to  
2 provide not only legally correct results,  
3 but practically correct results, which is  
4 why I admire her writing and the way she  
5 goes about things.

6 MR. LINK: As do we, Judge.

7 THE COURT: Why is it that somehow this  
8 technicality, which really is -- which has,  
9 in my view, no bearing on the legal -- on  
10 the legalities of the situation, whether  
11 were technically oriented or were  
12 practically oriented.

13 But there's no denial of the fact that  
14 this is separate, that this really is no  
15 longer a counterclaim and hasn't been for  
16 the last seven to eight years.

17 MR. LINK: Judge, we disagree with  
18 that. I don't think it's that simple, I  
19 really don't. I think we're confusing two  
20 issues, and let me start there.

21 There is the issue of severance. It is  
22 clearly within this Court's discretion to  
23 sever this case. We are not disputing that.  
24 We are not saying you should. We thought we  
25 were talking about whether the case was at

1 issue.

2 But we can talk about severance and  
3 whether it makes sense or not. And this  
4 Court needs to understand, no matter what  
5 Mr. Scarola wants, Mr. Rothstein is going to  
6 be part of this trial, whether we are suing  
7 him or we are defending their counterclaim,  
8 because this case is all about whether we  
9 can demonstrate that there is a connection  
10 between Mr. Edwards and Mr. Rothstein.  
11 That's what he says caused him harm.

12 We're going to be looking at evidence  
13 at some point in which we believe with  
14 100 percent certainty we can make that  
15 connection.

16 THE COURT: The connection between  
17 what?

18 MR. LINK: Between Mr. Edwards and  
19 Mr. Rothstein discussing the Epstein cases  
20 and getting around court scrutiny.

21 THE COURT: And that's fine. Why  
22 didn't you plead it and maintain the claim  
23 when you had the opportunity to do that?  
24 Instead there was a dismissal of the claim  
25 against Edwards and an abandonment of those

1 claims back years and years ago. And a  
2 choice was made to proceed only on a  
3 one-count complaint against Rothstein as of  
4 September 2011, thereby, as I indicated  
5 earlier, losing any trappings, losing any  
6 indicia of counterclaim, at least by that  
7 point and likely before that, because there  
8 were several iterations of the complaint  
9 that were amended, subsequent to the  
10 dropping of Edwards from the claim, thereby  
11 no longer making it a counterclaim. It was  
12 in name only. It had no legal significance  
13 whatsoever, except by name.

14 MR. LINK: It does, Your Honor. The  
15 legal significance, if I can approach, is  
16 laid out in our pretrial stipulation.

17 And the case law is really clear. When  
18 lawyers enter into a pretrial stipulation,  
19 Your Honor should follow it.

20 THE COURT: And I am wholeheartedly in  
21 agreement.

22 Let me stop you there, because, again,  
23 you have argued it, and I don't want to make  
24 a short trip to that.

25 Then Chief Judge Ciklin in a case --

1 that slips my memory as far as its name is  
2 concern -- spoke eloquently and at length  
3 about the sanctity of the pretrial  
4 stipulation.

5 So before I even read it, and what it  
6 says here, you quoted from it, that's what I  
7 read it. I didn't go back and look at the  
8 pretrial stipulation itself, among the --  
9 just so everybody knows -- among the 1,239  
10 docket entries here. So I don't want  
11 anybody to suggest that it was simply by  
12 virtue of laxity that I did not review the  
13 actual brief.

14 MR. LINK: Judge, there's none of us in  
15 this courtroom that have any doubt about how  
16 much time you have put into this case.

17 And unfortunately there are probably  
18 papers filed that you haven't even received  
19 yet; filed before we got the notice.

20 THE COURT: You got my rather brief  
21 response.

22 MR. LINK: The brevity was hard to  
23 miss. We got it. And we filed these  
24 before.

25 But the reason this joint pretrial stip

1 is important, Judge, is you keep saying they  
2 are not the counterclaim Plaintiff, and  
3 Mr. Scarola and I negotiated this together.  
4 We wrote it together, we made changes  
5 together. And every part of this pretrial  
6 stip and the jury instructions and  
7 everything we submitted to the Court sets  
8 this case up to be tried, Epstein against  
9 Rothstein, first issue to be cited, says  
10 right in there.

11 The second issue to be cited, Edwards  
12 versus Epstein. We've laid out how we're  
13 going to try this case. We've attached  
14 exhibit lists, witness lists. We do  
15 stipulated facts, Your Honor.

16 So there is no part of the pretrial  
17 that we entered into, long before  
18 Mr. Scarola's motion at 5:00 on Friday  
19 asking to sever this case, that was ever  
20 contemplated by the parties.

21 We entered into an agreement, two  
22 lawyers. That's what a stipulation is. We  
23 entered into an agreement, Judge, on how we  
24 would try this case. Now Mr. Scarola wants  
25 to change his mind. This is our contract.

1 THE COURT: But it's interesting,  
2 because in this pretrial, here is what it  
3 says. Quote, case against Rothstein. What,  
4 if any, damages were sustained by Epstein  
5 and proximately caused by Rothstein?

6 MR. LINK: Yes, sir.

7 THE COURT: Parenthetically, continue  
8 the quoted provision. Edwards does not  
9 agree with this language for the reason that  
10 the issue as stated fails to tie causation  
11 to Rothstein's operation of the Ponzi  
12 scheme.

13 It is Edwards' position that failure to  
14 limit the issue in this way as to Rothstein  
15 has a potential of confusing the jury in  
16 determining whether Epstein had any probable  
17 cause to claim damages Edwards arising out  
18 of the same circumstances, end of quote.

19 MR. LINK: Which means if you limit it,  
20 that prejudice is gone. That's what he's  
21 telling you. He agrees to this issue. He  
22 doesn't like the way I framed it. That's  
23 the difference.

24 If I put his language in, which tied it  
25 to the Ponzi scheme, he wouldn't have added

1 that. So all he is saying is, Judge, I  
2 agree it's going, but I don't like Link's  
3 language.

4 That is not him saying I reserve the  
5 right to not go forward with this claim.

6 And when you read through this contract  
7 between me and Mr. Scarola, as two officers  
8 of the court, and Judge Ciklin's opinion,  
9 and everybody else's, we are supposed to be  
10 bound by what we say here.

11 So that means, yes, you have discretion  
12 to sever cases, you always do. Severing the  
13 case, if that's a decision the Court makes,  
14 doesn't change the fact, that when  
15 Mr. Scarola noticed this case, the one we  
16 have a pretrial stip on, Judge, the one you  
17 entered an order on, which was the case, was  
18 not at issue. We don't like it. It is what  
19 it is. It's the law.

20 And one of the differences in what  
21 Mr. Scarola say and what the law is, is that  
22 every case where there was a waiver or  
23 technicality was post jury trial.

24 The Fourth DCA has said mandamus is  
25 appropriate, it requires no prejudice, it

1 requires you to follow the law.

2 THE COURT: So what Mr. Link is saying,  
3 Mr. Scarola, is that if I grant the motion  
4 for severance, this case is going to go up  
5 on a writ or mandamus?

6 MR. LINK: I don't mean it in a  
7 threatening way, Judge.

8 THE COURT: I don't take it that way.

9 MR. LINK: But that is the truth.

10 THE COURT: McLean Stevenson once said  
11 to Frank Burns, "Frank, you've gone over my  
12 head so many times, I have footprints on my  
13 scalp."

14 MR. LINK: Here is the easy fix. We  
15 don't need mandamus. If you decide to sever  
16 the cases for whatever reason, 20 days from  
17 today, Mr. Scarola can notice his case for  
18 trial and you can set it for 30, and we will  
19 be here to try the case, and we won't seek a  
20 continuance.

21 I don't think you should sever them,  
22 but that's within your discretion. But you  
23 can't fix today what was wrong in May,  
24 that's the problem.

25 THE COURT: The pretrial stipulation,

1 just for record, the case I keep on my bench  
2 is Palm Beach Polo Holdings, Inc., et. al  
3 versus Broward Marine, Inc. I have the  
4 original email from the Fourth District  
5 Court of Appeal copy. So I don't have a  
6 cite for you, but it's from 2015. That's  
7 easily accessible if you'd like to read it.

8 MR. LINK: Thank you.

9 I know Mr. Scarola said they're excited  
10 to try the case, believe me, Judge, we are  
11 really excited to try the case.

12 The evidence that we recently  
13 discovered --

14 THE COURT: Then waive the  
15 technicality. If you are so excited about  
16 it, then waive the technicality.

17 MR. LINK: I won't do that, Judge.

18 THE COURT: Well, repeatedly you  
19 indicate that -- you have indicated today  
20 how excited you are about trying the case.

21 MR. LINK: I am.

22 THE COURT: Yet --

23 MR. LINK: With the best judge in the  
24 circuit.

25 THE COURT: Thanks.

1 MR. LINK: For this case. How's that?  
2 So I don't get in trouble with the other  
3 judges. Did I save myself there?

4 THE COURT: Another TV show. Quit  
5 telling her how beautiful she is, we all  
6 know you are lying. You can figure that one  
7 out yourself. But anyway -- that's the  
8 husband speaking about.

9 MR. LINK: I am excitedly cautious and  
10 I cannot waive the legal right.

11 THE COURT: Well, that's what I'm  
12 trying to say about your excitement. The  
13 repetitive statement made in the motion is  
14 that your client is unwilling to waive the  
15 technical issue.

16 MR. LINK: We don't think it's  
17 technical. I think that's the difference.

18 MS. ROCKENBACH: May I just jump in?

19 THE COURT: It is my respectful view,  
20 hyper technical under these set of facts.  
21 The hyper technicality arises because of  
22 what I have already explained in detail.  
23 And that is, that this is really not a  
24 counterclaim, and hasn't been a counterclaim  
25 since Mr. Epstein made his decision to drop

1 Edwards from the case, which only provided  
2 the genesis for what was at the time a  
3 counterclaim technically. Perhaps even that  
4 might be able to be argued because of the  
5 fact that it came after the dropping of  
6 Edwards as a party to the claim. But  
7 certainly, without equivocation, after the  
8 second and third and whatever else  
9 iterations of the complaint as amended as of  
10 September of 2011, there was no semblance of  
11 a counterclaim because he was no longer a  
12 party defendant in the claim made by Epstein  
13 against Rothstein only. And that's where  
14 I'm talking about hyper technicality, that  
15 despite the eagerness on the part of Epstein  
16 to try the case, as enunciated by Mr. Link  
17 repeatedly --

18 MR. LINK: Mr. Link's excitement.

19 THE COURT: Well, I presume always that  
20 counsel is speaking by and for his or her  
21 client.

22 MR. LINK: I am, Your Honor, but I am  
23 personally excited.

24 THE COURT: Good. But again, it is  
25 without the willingness to waive the hyper

1 technicality.

2 Ms. Rockenbach.

3 MS. ROCKENBACH: Your Honor, I just  
4 wanted to add an appellate point. It sounds  
5 like you and I are both mutual fans of Judge  
6 Melanie May's clarity. She authored both of  
7 the Fourth DCA's decisions that you are  
8 guided by, the genuine parts decision as  
9 well as the Labor Ready decision. And it --  
10 submitted to the court, is not a hyper  
11 technicality in that the rule says shall,  
12 it's mandatory rule, and that is what Judge  
13 May was noting and approving and recognizing  
14 in the progeny of cases that existed before  
15 those two decisions. I am referencing the  
16 Bennett case.

17 What this Court has recognized is that  
18 Edwards could have but did not move to sever  
19 this case back in 2011 when Edwards was  
20 dismissed.

21 THE COURT: Was there a need to do  
22 that?

23 MS. ROCKENBACH: Yes. Absolutely. I  
24 was thinking about this. In other  
25 instances, I have had counsel come up and

1 tried to swap party names and drop, and  
2 switch, and -- you can't just do that. You  
3 have to actually -- I think there's an  
4 administrative order on it. I think you  
5 have to go to the court do it.

6 But in this instance, you absolutely --  
7 Mr. Edwards had the onus to come before this  
8 Court and say a few things. He could have  
9 made his case separate. He didn't, he chose  
10 not to. He waited at least seven years or  
11 six and a half years, by my count, to come  
12 on Friday after 5:00 p.m. to file a motion  
13 to sever the trial and use the at issue as  
14 an excuse to sever.

15 He didn't move to sever previously. It  
16 was not at an issue when he filed his motion  
17 on May 24th, 2017. And there is no case  
18 that Mr. Edwards -- no case that I could  
19 find -- and I looked -- and there's no case  
20 that Mr. Edwards has presented to this Court  
21 that says, you can cure the mandatory rule  
22 or defect of 1.440 by severing a  
23 counterclaim or a cause claim.

24 The last point I would like to make is  
25 Mr. Scarola said the rule 1.440 says a

1 party. It says, "any party." And that's  
2 significant. The reason why it says any  
3 party is that rule talks about crossclaims.  
4 It talks about counterclaims. It talks  
5 about any party.

6 So any party could have moved to set it  
7 for trial. And when Mr. Edwards moved, he  
8 didn't move as just Mr. Edwards trying to  
9 set his counterclaim for trial. He  
10 moved the -- the language is in my motion,  
11 and I am sure it's in the Court's extensive  
12 docket -- he move to set this case, quote,  
13 unquote, and quote, above-style cause of  
14 action, quote, unquote.

15 So he clearly could have moved to sever  
16 at that time. He did not. He waived the  
17 right to timely sever the action. And we  
18 ask that the Court grant the default against  
19 Rothstein today, unless there is argument to  
20 be made, and --

21 THE COURT: How does this change,  
22 though, your trial preparation if I sever  
23 the case today as opposed to I severed it --  
24 Judge Crow, my predecessor, severed it back  
25 in 2011 when it no longer was a

1 counterclaim, it was a separate action  
2 sharing only the same case number?

3 MS. ROCKENBACH: It changes the ability  
4 for Edwards to file a ripe 1.440 notice.  
5 Because it was not severed, he noticed the  
6 entire action for trial when the action  
7 wasn't at issue. So severing doesn't cure  
8 it.

9 THE COURT: Well, I am asking you, tell  
10 me how, for the record, how it affects your  
11 trial preparation or your presentation at  
12 trial? I think you need to get that on the  
13 record.

14 MR. LINK: Yes, Your Honor. It doesn't  
15 change our trial preparation. It changes  
16 how we try the case. There is a significant  
17 difference in me being the Plaintiff in the  
18 case and going first and my burden of proof  
19 than what Mr. Scarola wants to be is the  
20 plaintiff.

21 And he had a choice. He could have  
22 filed a separate action, and he would have  
23 been the plaintiff.

24 He chose -- he chose the vehicle. He  
25 doesn't like his vehicle today. He decided

1 on Friday he didn't like it. But he chose  
2 the vehicle of a counterclaim. That means I  
3 go first, he goes second. He hates that  
4 idea.

5 So it changes and it's prejudicial if  
6 these cases are severed, because they are so  
7 intertwined, Your Honor. I can't even think  
8 of a case that's not more intertwined.

9 THE COURT: You have the right to go  
10 first if the Rothstein case is before this  
11 court.

12 MR. LINK: In that case. But I have  
13 the right to go first in this case because  
14 he has the counterclaim.

15 THE COURT: I don't agree with you  
16 there. How do you have that right?

17 MR. LINK: Because I am the plaintiff  
18 in the case, I go first.

19 THE COURT: You are the plaintiff in  
20 the case against Edwards.

21 MR. LINK: No. But the first issue we  
22 described in the pretrial stip that's going  
23 to get tried is my issue against Rothstein,  
24 that means I go first.

25 THE COURT: I agree with you there.

1 MR. LINK: I don't go first in the  
2 trial.

3 THE COURT: That's precisely the  
4 question I asked and it was not answered  
5 correctly.

6 MR. LINK: Sorry.

7 THE COURT: That's okay.

8 I just want to make sure that we are  
9 clear that if consideration is given to  
10 trying both of these cases that Epstein  
11 would be able to prove his damages claim  
12 against Rothstein.

13 MR. LINK: Yes.

14 THE COURT: But as it relates to issues  
15 on the counterclaim -- we are calling it the  
16 counterclaim -- the claim brought by Edwards  
17 against Epstein clearly, in that particular  
18 action, Mr. Scarola would be bringing his  
19 witnesses first.

20 MR. LINK: Absolutely, Judge. I think  
21 I spoke poorly. I appreciate you correcting  
22 that.

23 But the way the pretrial is setup and  
24 the way the case is structured, the first  
25 case the jury will hear will be my case

1 against Mr. Rothstein. Then Mr. Scarola  
2 will present his case, and we will defend  
3 that.

4 So one of the things that's in my mind  
5 that I can't let go of, is how do we  
6 sanitize Rothstein from this case -- that's  
7 what Mr. Scarola wants to do -- when his  
8 whole claim against is we wrongly filed a  
9 pleading that connected Mr. Edwards to  
10 Rothstein. That's what Mr. Edwards has said  
11 has kept him in anxiety every single day  
12 since December 2009, the connection to  
13 Rothstein.

14 So, they have the burden of proof to  
15 show that we didn't have probable cause to  
16 make that allegation.

17 I promise you, Your Honor, when we get  
18 through the evidence, you will see there was  
19 plenty of reason to make that allegation.

20 So I don't know how you sanitize  
21 Rothstein from this case. So if he's going  
22 to be in case, isn't it more efficient to do  
23 it once? That's what the pretrial says.  
24 Mr. Scarola and I contracted to that.

25 The issue that really is the

1 struggle -- and I get it -- the struggle is,  
2 yes, these two cases are intertwined. Is  
3 there some machination I can do that would  
4 put this case at issue? And the answer is  
5 you can't. There's nothing you can do to  
6 cure the May defect, Your Honor. That's the  
7 problem. I know that's what you would like  
8 to do. I get it.

9 THE COURT: Let's take a five-minute  
10 break. We will be back momentarily. We  
11 will be in recess. Thank you.

12 (A recess was had 11:15 a.m. - 11:24 a.m.)

13 THE COURT: Mr. Link, did you finish  
14 your argument on the issue?

15 MR. LINK: I am confident I did, but,  
16 you know, it's hard for me to turn down an  
17 opportunity to say more. But, no, Your  
18 Honor, I think we said it all.

19 THE COURT: Thank you very much.

20 Mr. Scarola, the one thing, again --  
21 well, not the one thing -- multiple things  
22 that went through the Court's mind when I  
23 was dealing with this was the question I  
24 posed to Mr. Link, and that is, that the  
25 pretrial contemplation of the case -- of the

1 action being tried together. And the  
2 anticipated response to my question that  
3 trial strategy -- albeit now that we have  
4 ironed out the way in which the order of  
5 proof will proceed -- could be materially  
6 effected, and thus prejudicial to  
7 Mr. Epstein's position if the cases are not  
8 tried together as noticed.

9 Your thoughts.

10 MR. SCAROLA: Yes, sir. I don't  
11 understand what unfair prejudice possibly  
12 arises to Mr. Epstein when the jury is  
13 instructed that they must consider these  
14 cases separately.

15 The only prejudice would arise if  
16 Mr. Epstein is permitted to do what it is  
17 now obvious Mr. Epstein plans to do, and  
18 that is to use his case against  
19 Mr. Rothstein to improperly influence the  
20 jury with regard to Mr. Edwards' claims  
21 against Mr. Epstein.

22 The Court recognizes the fact that  
23 there is tremendous danger of confusion and  
24 prejudice if these two cases are tried  
25 together, following the plan that it has now

1 become evident Mr. Epstein plans to follow.  
2 What unfair prejudice arises if these  
3 two cases are tried separately? The answer  
4 to that question is, there can be none. And  
5 one of the reasons why there will be none  
6 is, the separate case against Mr. Rothstein,  
7 I predict, will never be tried.

8 If it is ever tried, it's a one-day  
9 trial. It's a jury selection without any  
10 opposition; there's a presentation of a case  
11 without any opposition; there's a closing  
12 argument without any opposition. The case  
13 is over in a day. And what they get, if  
14 they get anything, is an uncollectible  
15 judgment.

16 THE COURT: What about the pretrial  
17 stipulation? Judge Ciklin speaks, again, at  
18 length, about the sanctity of the pretrial  
19 stipulation.

20 MR. SCAROLA: Yes, sir.

21 THE COURT: He calls it the attempt is  
22 to, quote, avail ourselves of the  
23 opportunity to once again stress the  
24 tremendous efficacy of The Pretrial  
25 Stipulation. He puts each of the words,

1 about whether they are going to proceed  
2 against Mr. Rothstein if Your Honor accepts  
3 the argument that they are making.

4 Now, I have had substantial experience  
5 before this Court. And your Honor is not a  
6 Judge who has ever been deterred from doing  
7 what you consider to be the right thing to  
8 do because there's the threat of an appeal.

9 They want to petition for writ of  
10 mandamus, bring it on. And if the appellate  
11 court believes that the arguments that are  
12 being made today have merit, we will know  
13 before we finish our preliminary screening  
14 of the jury on Tuesday.

15 The Court will act immediately, knowing  
16 that this case is going to proceed to trial.  
17 And whatever concerns Your Honor has -- and  
18 there should be none -- whatever concerns  
19 Your Honor has will get resolved very  
20 quickly under those circumstances.

21 If there has ever been an argument for  
22 waiver -- if there has ever been a clear  
23 demonstration of no prejudice, this record  
24 establishes that.

25 Judge May's words, "Depending upon the

1 "The Pretrial Stipulation" in capital  
2 letters -- strike that. In capitals to  
3 start each of those words, and drops a  
4 footnote stating, quote, out of respect for  
5 and to dignity the use of The Pretrial  
6 Stipulation we have intentionally  
7 capitalized the name of this important trial  
8 efficiency tool, end quote.

9 MR. SCAROLA: And Your Honor, has noted  
10 the operative language. Your Honor has  
11 noted the reservation that is preserved in  
12 that pretrial stipulation about concern for  
13 prejudice.

14 So there's nothing in that pretrial  
15 stipulation that supports the position that  
16 is being argued on behalf of Mr. Epstein,  
17 and that is, that we have somehow agreed  
18 that we are going to delay our right to  
19 trial by jury while we wait -- perhaps  
20 forever -- for the claim against  
21 Mr. Rothstein to be placed at issue.

22 They can't get a default today.  
23 There's been no notice. I don't know  
24 whether they're ever going to get a default.

25 We become hostage to their decision

1 circumstances, the mandatory provisions of  
2 rule 1.1440 may be waived."

3 They have been waived. They agreed  
4 that this case was going to be tried without  
5 any further delay starting next week. They  
6 told Your Honor they would be ready for  
7 trial. They told Your Honor they are not  
8 asking for a continuance. They told Your  
9 Honor they are ready and anxious to try this  
10 case.

11 There has been a waiver of any  
12 technical objection that might exist, but  
13 there's no technical objection. There is no  
14 technical objection.

15 This is a separate claim. It has  
16 proceeded as a separate claim. It was  
17 noticed for trial as a separate claim.  
18 There is nothing in the pretrial stipulation  
19 that suggests otherwise.

20 We have not stipulated with regard to  
21 anything having to do with the Rothstein  
22 case, because we don't represent  
23 Mr. Rothstein. His signature and no  
24 signature of counsel of his appears on that  
25 pretrial stipulation.

1 This pretrial stipulation relates to  
2 the trial of what is a separate cause of  
3 action by Bradley Edwards against Scott --  
4 excuse me -- against Mr. Epstein.

5 Judge May, again, \*Here the complaint  
6 was filed in 2002. The parties had adequate  
7 time to prepare for the hearing, and the  
8 trial court had provided the parties with  
9 the requisite 30-day notice. There was no  
10 ambush or violation of the procedural  
11 safeguards that Rule 1.440 was designed to  
12 protect. That's this case.

13 There is nothing but, at very best, a  
14 hyper-technical argument that is being  
15 raised. They are refusing to waive it,  
16 because they don't want this case to ever be  
17 tried.

18 And if Your Honor is concerned about  
19 the mountain -- the avalanche of paper with  
20 which this court has been assailed, I can  
21 assure you that it isn't going to stop if we  
22 don't start on Tuesday. It's going to get  
23 worse.

24 The defense, in violation of this  
25 Court's order, last week listed 724 new

1 So the solution is very simple.  
2 Whether it's a claim or a counterclaim, you  
3 have the discretion to sever it. It gets  
4 severed. The case is at issue. It goes to  
5 trial.

6 We are ready to proceed, and we ask you  
7 for the right to be able -- enforcement of  
8 the right to be able to proceed. Thank you,  
9 sir.

10 THE COURT: Thank you, Mr. Scarola.  
11 Thank you, Mr. Link and Ms. Rockenbach, as  
12 well.

13 MS. ROCKENBACH: Your Honor, may I hand  
14 the Court one case? I apologize. It's  
15 cited in my motion. May I approach?

16 THE COURT: Sure.

17 MS. ROCKENBACH: It is the Bennett  
18 case. Because --

19 THE COURT: I have it. Bennett versus  
20 Continental Chemicals?

21 MS. ROCKENBACH: Right.

22 And just to respond to Mr. Scarola with  
23 regards to --

24 MR. SCAROLA: I'm sorry, Your Honor,  
25 can we put an end to this, because there's a

1 exhibits that they want to use. And they  
2 are going to use this hyper technicality to  
3 say the pretrial order was invalid because  
4 the case was not at issue; a new pretrial  
5 order needs to be issued; discovery is not  
6 yet closed; we have an opportunity to  
7 proceed to take additional discovery; and we  
8 can amend our exhibit list, and we can  
9 include 724 new exhibits, and more which  
10 they say they are still finding.

11 The only way to put an end to this is  
12 to proceed to trial as Your Honor informed  
13 everyone we would, in no uncertain terms,  
14 the last time this case was reluctantly  
15 continued by this Court.

16 So again, my client has been waiting  
17 for nine years to clear his name from the  
18 defamatory allegations that were made  
19 against him in a maliciously filed lawsuit.

20 He was accused of heinous crimes, of  
21 being associated with one of the most  
22 massive Ponzi schemes in history. And the  
23 only way he can effectively exonerate  
24 himself is by getting his day in court, and  
25 he deserves to have that now.

1 lot that we need to do?

2 THE COURT: I thought that she just  
3 wanted to mention the case.

4 MS. ROCKENBACH: I do.

5 THE COURT: I have it here and I have  
6 it highlighted. I have reviewed the  
7 highlighted provisions of the case.

8 MS. ROCKENBACH: Thank you. It is  
9 about the fact that you can't cure the  
10 defect.

11 MR. SCAROLA: I'm sorry. I'm objecting  
12 to further argument, Your Honor, and ask  
13 that we please move on.

14 THE COURT: I will give you a minute to  
15 finish up.

16 MS. ROCKENBACH: Thank you, Your Honor.

17 In Bennett, the party, just like  
18 Mr. Edwards is doing here, suggested to the  
19 court to sever in order to fix the rule  
20 1.440 deficiency, and the appellate court  
21 said no you can't do that, and \*The  
22 procedure for setting actions for trial is  
23 simple, but many attorneys are careless  
24 about it. They serve a notice for trial  
25 prematurely. This requires a motion to

1 strike. And there's not excuse for failing  
2 to follow the rule." And it goes on about  
3 how the rule is not directory, it's  
4 mandatory.

5 So this Bennett case speaks to exactly  
6 what is evolving here in terms of the  
7 severance issue. It doesn't correct the  
8 defect. Thank you.

9 THE COURT: Thank you.

10 MR. SCAROLA: Does Your Honor want a  
11 response?

12 THE COURT: No.

13 MR. SCAROLA: Thank you, sir.

14 MS. ROCKENBACH: And, Your Honor, we do  
15 have a motion for default that we filed  
16 simultaneously. And I have a proposed order  
17 for the Court.

18 THE COURT: Thanks.

19 I don't know if you've looked at the  
20 O'Brien versus Florida Birth-Related  
21 Neurological Injury Compensation  
22 Association, a case which is from the Fourth  
23 District, which indicates that it negatively  
24 treated the holding -- at least one of the  
25 holdings in Bennett versus Continental. And

1 it is a Fourth District Court of Appeal  
2 case, similar to the reliance by Epstein,  
3 principally, on the Gawker versus Bollea  
4 case. Bollea, if I recall correctly, is  
5 Hulk Hogan from wrestling.

6 MS. ROCKENBACH: Correct.

7 THE COURT: But again, this Labor Ready  
8 case, authored by Judge May that we have  
9 been speaking about, declined to extend the  
10 Gawker case to its handling of the Labor  
11 Ready case from the Fourth.

12 I haven't seen the O'Brien case. I  
13 will give it a real quick look, so that I  
14 can be as comprehensive as possible.

15 MS. ROCKENBACH: Is that at 942 So.2d  
16 1030?

17 THE COURT: It doesn't give me a  
18 citation in this. It just says Fourth  
19 District Court of Appeal. March 18th, 1998  
20 is the date of decision. It doesn't give me  
21 a cite to report.

22 But I can look it up real quickly. 710  
23 So.2d 51.

24 MS. ROCKENBACH: I am reading that case  
25 right now, Your Honor.

1 THE COURT: By the first blush it  
2 doesn't look like it has anything to do  
3 with --

4 MR. LINK: We don't see a reference,  
5 Your Honor.

6 THE COURT: It talks about fundamental  
7 error, is really what it goes to.

8 It cites to the case and its citation  
9 is, quote, We have not been as willing as  
10 some of our sister courts to find  
11 fundamental error where an objection had  
12 been raised by the trial court -- strike  
13 that -- had been raised in the trial court.  
14 The error could have been corrected and a  
15 new trial would have been unnecessary.

16 One of the string of cites cites that  
17 Bennett case. There is no specific  
18 application of that case to this one here.

19 My ruling is as follows: The Court has  
20 in preparation for this hearing carefully  
21 weighed the respective positions taken by  
22 the parties. And I appreciate the  
23 well-written briefs and the well-articulated  
24 positions taken as it relates to this issue.

25 The controlling case here in the Fourth

1 District, as far as the Court is concerned,  
2 is the Labor Ready Southeast, Inc. versus  
3 Australian Warehouses Condominium  
4 Association case. But not so much for the  
5 Court's position that it's taking as it  
6 relates to waiver, which the Court will use  
7 as a secondary proposition in its ruling  
8 today, but more so the spirit and intent of  
9 the case and the message that Judge May and  
10 her colleagues, in my respectful view, sent  
11 to the trial courts and the litigators,  
12 particularly here in the Fourth District  
13 Court of Appeal jurisdictional area.

14 The primary ruling and what the Court  
15 is going to determine here is that it will  
16 sever the claims and will try and proceed  
17 with the Edwards versus Epstein matter  
18 commencing as scheduled on Tuesday,  
19 March 13, 2018.

20 Today being, for the record, and for  
21 ease of review, March 8th, 2018. Reference  
22 being made to Friday, March 2, 2018. So,  
23 again, for ease of review.

24 Because, frankly, when I'm reading  
25 appellate briefs sometimes from the county

1 court, it makes it so much easier when the  
2 trial judge sets forth the dates as opposed  
3 to having to go back and try to reconstruct  
4 the timeline when the court is making its  
5 ruling.

6 The severance is based on the fact that  
7 there is no legal relationship between the  
8 Edwards case against Epstein and the damages  
9 claim by Epstein against Rothstein solely on  
10 a singular-count-amended complaint -- again,  
11 forgive the lack of specificity as to the  
12 iteration of the amended complaint -- but  
13 again, as late as September of 2011 -- six  
14 and a half years ago -- and the fact that  
15 the Epstein team failed in its capacity, as  
16 reasonable trial lawyers, to have secured  
17 the default, if it sought same, so as to, in  
18 good faith, maintain its claim against  
19 Rothstein.

20 I have no recollection whatsoever of  
21 anything coming up during the approximate  
22 four years that I have presided over this  
23 case in division AG of anything whatsoever  
24 having to do with Mr. Epstein's prosecution  
25 of that one-count complaint against

1 Rothstein from that September 2011 amended  
2 complaint.

3 Meaning the entire focus of this Court  
4 in the multiple hearings that have been  
5 held, in the deluge of paper that -- in part  
6 the Court brings on itself because of its  
7 preference to have the hard copies, as  
8 opposed to utilizing modern technology and  
9 solely the computers. It's much easier for  
10 me, frankly, and my eyes, physically, to  
11 have the paper. It's not because of  
12 necessarily wanting it. It's more so  
13 because of it's easier on my eyes and causes  
14 much less strain on my eyes than having to  
15 rely on just the computer copy. I wanted  
16 you to know that as well.

17 So severance in this case, whether it  
18 was done in September of 2011 or even before  
19 that, when the -- what is called the  
20 counterclaim, but in this Court's view is  
21 not. It may have been because at the time  
22 back in December of 2009 -- if I'm not  
23 mistaken is when the Edwards claim was  
24 brought in against Epstein. That's the  
25 approximate time.

1 So now we're dealing with approximately  
2 seven years ago -- seven plus years ago from  
3 the time that the action was brought by  
4 Mr. Edwards against Epstein.

5 Technically, because there may not have  
6 been an order signed by the Court, whatever  
7 closing documents that are usually and  
8 customarily dealt with in closing out a  
9 file, may not have been in the court file at  
10 that time, perhaps, technically, it  
11 constituted a counterclaim. But undeniably,  
12 the trappings, the name, the legal effect  
13 was not a counterclaim at all, and certainly  
14 bore no semblance to a counterclaim once  
15 Rothstein dropped Edwards -- once Epstein  
16 dropped Edwards -- I apologize -- and  
17 proceeded solely against Rothstein.

18 And whether severance took place or a  
19 separate claim would have been brought in  
20 December of 2009 -- albeit because of the  
21 potentiality of the pleadings not being  
22 closed, so to speak, as to Edwards at that  
23 particular time, so it may have been called  
24 a counterclaim. But certainly, and without  
25 equivocation, once that case shifted -- now

1 Mr. Epstein didn't have to shift it. But it  
2 was by his own doing. He shifted it,  
3 because he no longer had Edwards as a  
4 defendant in the case. He took that  
5 operative step.

6 So it was in name only that this  
7 continued having the moniker of a  
8 counterclaim, but it wasn't one. It had the  
9 genesis in Epstein versus Rothstein, Edwards  
10 and L.M. case so as to permit Edwards to  
11 bring the claim against Rothstein. But  
12 undoubtedly, it no longer was a counterclaim  
13 for at least the past seven or eight years.

14 And in name only, I am not going to  
15 remove this case from the docket on what is  
16 unquestionably here a hyper technicality.

17 If I'm directed by the Fourth District  
18 Court of Appeal to do so, I will, as always,  
19 assiduously follow their order. But I do  
20 not believe here -- because the focus of the  
21 last eight years has been Edwards' claim  
22 against Epstein. And in reality, in name  
23 only, since the dropping of Edwards from  
24 Epstein's case, his own voluntarily  
25 dismissal of Edwards, creating a separate

1 claim, albeit having its genesis, as all  
 2 malicious prosecution claims do, in that  
 3 prior action, there is nothing that has been  
 4 argued to today to suggest that a separate  
 5 action has been, could have been, and, in  
 6 fact, is at issue here. And that has been  
 7 the focus, and the only focus that I am  
 8 aware of, juxtaposing the Epstein versus  
 9 Rothstein case here; that being the only  
 10 focus has been for the last seven or eight  
 11 years; and clearly the four years that I  
 12 have been presiding over this case, solely  
 13 the Edwards versus Epstein malicious  
 14 prosecution claim.

15 And again, I am not going to be bound,  
 16 and I don't think any trial court should be  
 17 bound by the choice of words that may have  
 18 been used to name a given pleading.

19 It's a separate claim, and it has been.  
 20 And clearly and without equivocation has  
 21 been since, somewhat ironically, what has  
 22 been brought this matter before the Court is  
 23 the September 2011 claim that was solely  
 24 brought by Rothstein -- I mean, by Epstein  
 25 against Rothstein.

1 It essentially highlights the precise  
 2 position that is being taken by this Court  
 3 legally, factually and practically. And  
 4 that's the best that I can do.

5 MS. ROCKENBACH: Thank you, Your Honor.  
 6 I have proposed orders that just simply  
 7 grant Mr. Edwards' motion to sever and  
 8 denying Epstein's motion to remove.

9 And I also have a default for Your  
 10 Honor, along with the motion for default, if  
 11 you would like to entertain that as well.

12 THE COURT: Any objection?

13 MR. SCARDOLA: We don't represent  
 14 Mr. Rothstein, Your Honor. But I don't know  
 15 how that default can be entered without  
 16 notice to Mr. Rothstein.

17 He has a counsel, who has appeared in  
 18 this case. That is, in that case. I don't  
 19 know whether -- I'm not arguing. I'm  
 20 expressing a concern.

21 THE COURT: Excuse me. And I apologize  
 22 for interrupting.

23 What I was going to say is this. If he  
 24 has had representation in the case, then he  
 25 would have to be noticed in order for the

1 Court to enter a default.

2 MS. ROCKENBACH: Understood.

3 THE COURT: And since this is, again, a  
 4 later iteration of a complaint to which my  
 5 understanding was -- he did respond in some  
 6 fashion originally through counsel or not?  
 7 Or was he defaulted from --

8 MS. ROCKENBACH: Earlier on. I'm told  
 9 by co-counsel early on.

10 We served it on Mr. Nurik,  
 11 Mr. Rothstein's counsel. The question I am  
 12 asking is whether it was noticed for hearing  
 13 today. It went out yesterday.

14 THE COURT: That wouldn't have been an  
 15 appropriate notice. So it would have to be  
 16 re-noticed to Mr. Nurik, and we will proceed  
 17 accordingly once what appropriate notice has  
 18 been provided.

19 MS. ROCKENBACH: Correct.

20 THE COURT: I just want to make clear,  
 21 as well, that I have taken into account, by  
 22 virtue of the ruling that I have made, the  
 23 contention that somehow trial strategy --  
 24 and that was at the behest of the court. I  
 25 don't believe it was argued in the motion.

1 But again, in my efforts to try to be  
 2 as fair as I possibly can to both sides, I  
 3 raised it to hear from Epstein's counsel  
 4 what, if any, prejudice would be done by  
 5 virtue of the severance.

6 And again, respectfully, again, in my  
 7 view, I believe that the response that was  
 8 provided is, in fact, supportive of the  
 9 Court's position here. And, that is, the  
 10 added reason for the Court's severance is  
 11 the fear of the Court, again, by virtue of  
 12 its going through thousands of pages of  
 13 documents by now, hearing scores of motions  
 14 and being exposed to more, reviewing  
 15 deposition transcripts, having the anecdotal  
 16 knowledge that the Court has of  
 17 Mr. Rothstein's criminal activity, and the  
 18 fact that it is and was, and potentially  
 19 continues to be, because of the media  
 20 attention that remains -- just an example,  
 21 being a CNBC special that continually runs  
 22 on American Greed, I believe is the name of  
 23 the show -- that this biggest Ponzi scheme  
 24 in the history of state of Florida remains  
 25 very fresh in the minds of many.

1 And hence, a second reason, a third  
2 reason for severance is the absolute danger  
3 of confusion relative to a jury's  
4 consideration of Edwards' cases versus  
5 Epstein's case against Rothstein solely.

6 While facts overlap, the Court can  
7 consider and would consider the confusion  
8 issues as well as the prejudice, undeniably,  
9 that would be done here if both of these  
10 cases were tried together.

11 Clearly, as I indicated at the  
12 inception of this hearing, I am not pleased  
13 by the events that occurred here. No court  
14 should be. The blame is several fold,  
15 including the individual who is sitting  
16 here, who ultimately is responsible for the  
17 execution of that trial order. So I have,  
18 to a degree, blame myself for the execution  
19 of that order. And ultimately I bear the  
20 responsibility of that, and I recognize  
21 that.

22 But at the same time, as I have  
23 mentioned on numerous occasions before  
24 groups of lawyers, who have been kind enough  
25 to ask me to speak on these types of issues,

1 just generally in terms of how we do things  
2 here, tips from the bench and the like, we  
3 so rely on the bar and exceptional lawyers  
4 that we have here in terms of our daily  
5 business.

6 That doesn't exonerate the Court in  
7 executing the trial order. But it sheds  
8 some light on the busyness of the Court, and  
9 the fact that we are, at the present time,  
10 as you know, responsible in each of the  
11 civil divisions of anywhere between 1,100 to  
12 1,200 cases to 1,5' to 1,600 cases in some  
13 divisions. The lower number is done by  
14 design because one of our judges has agreed  
15 to handle the bulk of the tobacco litigation  
16 cases, so that Judge has a reduced caseload,  
17 deservedly so.

18 But it does highlight our expected  
19 reliance on counsel so that these things  
20 don't occur in the future. And it's a good  
21 reminder to all concern about how these  
22 things can crop up.

23 But here hyper technicality should not  
24 stand in the way of a pending matter of over  
25 3,000 days and nearly nine years.

1 And again, I do not want this order to  
2 reflect a suggestion that the Court is  
3 willing to deviate from the dictates of  
4 1.1440 -- strike that. 1.440. But instead,  
5 as I indicated before, the primary impetus  
6 here is one of severance for the reasons  
7 that I have tried to state as clearly and  
8 concisely as I can, balancing the rights,  
9 strategies and obligations of each party's  
10 concern, balancing what I perceive to be in  
11 the best interest of justice to all  
12 concerned, balancing the rights of  
13 Mr. Epstein to proceed against Rothstein,  
14 but at the same time recognizing the  
15 separate nature of Edwards' claims against  
16 Epstein; and the fact --

17 Again, while facts may overlap, it does  
18 not extinguish the proposition that the  
19 Court has indicated, and, that is, whether  
20 severance be done now, six months ago, seven  
21 years ago, or eight and a half years ago,  
22 from December of 2009, it would have been  
23 the appropriate and right thing to do under  
24 these particular factual circumstances.

25 All right, we have bumped up now

1 against the lunch hour.

2 What do you want to handle next?

3 MR. SCARDOLA: The evidentiary issues  
4 that have cropped up in past week or so.

5 MR. LINK: Would Your Honor mind  
6 entering the orders first once we have  
7 agreed to the language?

8 THE COURT: That's fine.

9 Off the record.

10 (A discussion was held off the record.)

11 MS. ROCKENBACH: May I approach, Your  
12 Honor?

13 THE COURT: Again, commendation to our  
14 court reporter, who is exceptional and  
15 always such a pleasure to work with. We  
16 appreciate her work.

17 There is a case that -- from the Fourth  
18 District Court of Appeal that criticizes one  
19 of my now former colleagues in terms of the  
20 order saying, "for the reasons stated on the  
21 record."

22 So in an abundance of caution, I think  
23 it would be best suited for that portion of  
24 transcript to be transcribed. You can do it  
25 rush if you need to.

1 I am sure Ms. Sonja would be happy to  
2 oblige to the best of her ability. And,  
3 really, only that portion of it so that --  
4 my decision would need to be rushed, I  
5 think.

6 MR. SCAROLA: Attached, for the reasons  
7 stated on the record. Attached.

8 THE COURT: If both sides feel that  
9 that's sufficient.

10 Ms. Rockenbach, is an appellate  
11 specialist. I defer to her specialty.

12 Mr. Scarola, I know you have also been  
13 involved in numerous appeals, whether  
14 directly or indirectly, but your name  
15 appears on many appellate decisions.

16 Again, I concede to your expertise only  
17 to bring up the fact that one of our most  
18 respected and one of our former circuit  
19 court judges was criticized for the order in  
20 the manner in which it's being presented to  
21 me.

22 MS. ROCKENBACH: You're correct. I am  
23 aware of that decision, unfortunately. And  
24 I would ask the Court for a break so that  
25 our court reporter could type up the -- not

1 We will return back at 1:30, so as to  
2 give you all some logistic assistance to try  
3 to arrange, as you need to, for the court  
4 reporter and transcript purposes.

5 Keep in mind that we will go to 4:30  
6 today. And also, that I am not available  
7 tomorrow. I have several panel commitments  
8 for the bench bar tomorrow. And so that  
9 would preclude any further consideration. I  
10 do have a full day of hearings on Monday as  
11 well.

12 MS. ROCKENBACH: Your Honor, before we  
13 break, anticipating a potential adverse  
14 ruling, I have a motion to stay the matter,  
15 which is then immediately reviewable as  
16 well.

17 The motion to stay that I have I did  
18 not anticipate this court severing the  
19 cases. It was only the adverse ruling of  
20 the removal of the case from the trial  
21 docket. So I would like to revise that  
22 motion. But I would make an ore tenus  
23 motion to stay this action in order for  
24 Mr. Epstein to file the petition for writ of  
25 mandamus as to the order denying the motion

1 just the ruling, but we need the entire  
2 hearing transcript in order to have a  
3 complete record.

4 So we would ask for a change in court  
5 reporters, as reluctant as I am to do that.  
6 I know it's my duty to my client and to the  
7 Court.

8 THE COURT: I respect that. And again,  
9 you will have to deal with Sonja directly.

10 For the record, again, I apologize for  
11 not using her last name. We have known each  
12 other for many years. And I know she takes  
13 no personal qualms at it, because we have  
14 spoken about that before. But at the same  
15 time, any review by the court, I would ask  
16 that they excuse my lack of formality here.

17 MR. SCAROLA: We have no problem with  
18 breaking for lunch at this point so that we  
19 can arrange a change of court reporters.

20 The only appeals I remember, Your  
21 Honor, are the ones I lost.

22 THE COURT: Again, thank you for your  
23 concerns and your patience as well.

24 I also recognize and thank Ms. Musgrave  
25 for being here.

1 to remove the case from the trial docket and  
2 a petition for writ or certiorari as to the  
3 order granting Mr. Edwards' motion to sever.

4 THE COURT: Mr. Scarola.

5 MR. SCAROLA: We would clearly object  
6 to a stay, Your Honor. It would effectively  
7 be granting the same relief that the defense  
8 has been unsuccessful in obtaining.

9 We are confident that Your Honor's  
10 order will withstand appellate review. And  
11 a petition for writ of mandamus is an  
12 expedited proceeding. I am sure we will  
13 hear from the appellate court if they have  
14 any reason whatsoever to question the  
15 proprietary or the order that Your Honor has  
16 entered.

17 THE COURT: The motion to stay from  
18 this Court is denied.

19 MR. SCAROLA: Your Honor, I expect what  
20 we will deal with after lunch are issues  
21 that relate to the most recently disclosed  
22 documents, including, in particular, emails.

23 THE WITNESS: That's what I anticipate.

24 MR. SCAROLA: And I have a timeline,  
25 which I provided to opposing counsel. I am

1 going to hand that to Your Honor in case you  
2 want to chew on that over lunch.

3 MS. ROCKENBACH: Your Honor, if I may  
4 approach.

5 THE COURT: Sure.

6 MS. ROCKENBACH: I have one submission  
7 to the Court. It was hand-delivered  
8 yesterday before we received your judicial  
9 assistant's email about no future  
10 submissions. But it relates to this issue.

11 THE COURT: I can't promise you that I  
12 will have time to read it.

13 MS. ROCKENBACH: Understood.

14 THE COURT: I will do the best I can.

15 MS. ROCKENBACH: Thank you very much.

16 THE COURT: Thank you all again for  
17 your excellent presentations and arguments.

18 We will be in recess until 1:30.

19 - - -

20 (The above proceedings were  
21 concluded at 12:08 p.m.)  
22  
23  
24  
25

1 COURT CERTIFICATE

2  
3  
4 STATE OF FLORIDA )  
 : SS  
5 COUNTY OF PALM BEACH )  
6

7 I, SONJA D. HALL, certify that I was  
8 authorized to and did stenographically report the  
9 foregoing proceedings and that the transcript is a  
10 true record of my stenographic notes.  
11

12  
13 Dated this 8th day of March 2018.  
14

15  
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SONJA D. HALL  
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