

EXHIBIT A

EXCERPT FROM HEARING
REGARDING
MOTION TO STRIKE PRIVILEGED
DOCUMENTS

RECEIVED, 3/13/2018 5:02 PM, Clerk, Fourth District Court of Appeal

EFTA00801838

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

3 Case No. 502009CA040800XXXXMB

4
5 JEFFREY EPSTEIN,

6 Plaintiff/Counter-Defendant,

7 vs.

8 SCOTT ROTHSTEIN, individually;
9 BRADLEY EDWARDS, individually,

10 Defendants/Counter-Plaintiffs.
_____ /

11
12 TRANSCRIPT OF PROCEEDINGS

13
14 DATE TAKEN: Thursday, March 8th, 2018
15 TIME: 10:07 a.m. - 12:08 p.m.
16 PLACE 205 N. Dixie Highway, Room 10D
West Palm Beach, Florida
17 BEFORE: Donald Hafele, Presiding Judge

18
19
20 This cause came on to be heard at the time and
21 place aforesaid, when and where the following
22 proceedings were reported by:

23 Sonja D. Hall
24 Palm Beach Reporting Service, Inc.
1665 Palm Beach Lakes Boulevard, Suite 1001
25 West Palm Beach, FL 33401
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1
2 APPEARANCES:

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6 West Palm Beach, FL 33401
By KARA BERARD ROCKENBACH, ESQUIRE
By SCOTT J. LINK, ESQUIRE

7 For Defendant/Counter-Plaintiff:

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West Palm Beach, FL 33409
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10 By DAVID P. VITALE JR., ESQUIRE
By KAREN TERRY, ESQUIRE
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12 For Non-Parties [REDACTED], [REDACTED] & Jane Doe

13 HATCH, JAMES & DODGE, P.C.
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16 For Jeffrey Epstein:

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By JACK A. GOLDBERGER, ESQUIRE
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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

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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

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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?

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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

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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

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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

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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

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

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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.

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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

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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

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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

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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

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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.

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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, [REDACTED] 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

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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

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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

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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.

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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.

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.