

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
FORT LAUDERDALE

Case No. 09-34791-RBR

Chapter 11

IN RE:

ROTHSTEIN ROSENFELDT ADLER, P.A.,

Debtor

_____ /

VIDEOTAPED DEPOSITION

OF

JAMES N. HURLEY, ESQUIRE

Corporate Representative of Fowler White Burnett, PA

Friday, October 19th, 2018
10:05 a.m. - 2:29 p.m.
525 Okeechobee Boulevard, Suite 1200
West Palm Beach, FL 33401

Examination of the witness taken before

Sonja D. Hall
Palm Beach Reporting Service, Inc.
1665 Palm Beach Lakes Boulevard, Suite 1001
West Palm Beach, FL 33401
(561) 471-2995

1 APPEARANCES:

2 For Jeffrey Epstein:

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6 By SCOTT J. LINK, ESQUIRE
7 By JENNIFER LETTMAN, ESQUIRE

8 For Bradley Edwards:

9 SEARCY, DENNEY, SCAROLA, BARNHART &
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11 2139 Palm Beach Lakes Boulevard
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13 By JACK SCAROLA, ESQUIRE

14 For Farmer Jaffe:

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18 By Bradley Edwards, Esquire

19 For Fowler White:

20 CARLTON FIELDS, PA
21 525 Okeechobee Boulevard, Suite 1200
22 West Palm Beach, FL 33401
23 By JOSEPH IANNO, JR, ESQUIRE

24 ALSO PRESENT

25 Above & Beyond Reprographics
2161 Palm Beach Lakes Boulevard, Suite 412
West Palm Beach, FL 33409
By Manuel Santiago, Videographer

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1 THE VIDEOGRAPHER: We are on the video
2 record. This is the 19th day of
3 October 2018. The time is approximately
4 10:05 a.m.

5 This is the videotaped deposition of
6 the corporate representative of Fowler White
7 Burnett, P.A., In Re: Rothstein Rosenfeldt
8 Adler, PA.

9 This deposition is being held at 525
10 Okeechobee Boulevard, West Palm Beach, FL
11 33401.

12 My name is Manuel Santiago. I am the
13 videographer representing Above & Beyond
14 Reprographics.

15 Will the attorneys please announce
16 their appearances for the record?

17 MR. SCAROLA: My name is Jack Scarola.
18 I am counsel on behalf of Bradley Edwards.

19 MR. EDWARDS: Brad Edwards on behalf of
20 Farmer Jaffe.

21 MR. IANNO: Joseph Ianno, Carlton
22 Fields, on behalf of Fowler White.

23 MR. LINK: Scott Link and let Jennifer
24 Lettman on behalf of Mr. Epstein.

25

1 THEREUPON,

2 JAMES N. HURLEY, ESQUIRE,

3 being a witness in the notice heretofore
4 filed, and being first duly sworn in the above cause,
5 testified on his oath as follows:

6 THE WITNESS: I do.

7 MR. LINK: Mr. Scarola, before we begin
8 with questions, some housekeeping matters.

9 You have a subpoena -- the notice, at
10 least, with duces tecum.

11 MR. SCAROLA: Yes.

12 MR. LINK: So we have 182 pages of
13 documents to be produced. So I'm giving you
14 what we've marked as 1 through 182.

15 We have an additional set of documents
16 that are 183 through 215, that I do not
17 believe are responsive to your notice. They
18 are Bates-numbered emails. I don't know if
19 you want to have these produced and made
20 available to everyone or not.

21 MR. SCAROLA: Are those the documents
22 that have been identified on a privilege
23 log?

24 THE WITNESS: They very well may be.
25 They have Bates numbers on them. I do not

1 know if they were originally identified on a
2 privilege log, subsequently removed. I
3 don't know the status of them, but they may
4 very well have been originally on a
5 privilege log.

6 MR. SCAROLA: Let me see what you have.
7 We will talk about both of the groups of
8 documents you're producing today and we will
9 decide what, if anything --

10 MR. IANNO: One group I'm producing.
11 The second group I don't believe is
12 responsive, but I will produce it, if you
13 would like a copy of them.

14 MR. LINK: You have a copy for me of
15 the second group?

16 MR. IANNO: No, because I am not
17 producing them yet.

18 MR. LINK: You delivered them.

19 MR. IANNO: No, no. I didn't deliver
20 them. He's looking at them. I only have
21 one copy. My copy.

22 DIRECT EXAMINATION

23 BY MR. SCAROLA:

24 Q Would you please state your full name?

25 A John Norford Hurley.

1 **Q** Mr. Hurley, how are you currently employed?

2 **A** I'm employed by Fowler White Burnett.

3 **Q** Are you appearing here today on behalf what
4 we will call Fowler White, for abbreviated purposes, in
5 response to a re-notice of taking video deposition of
6 the law firm?

7 **A** I am.

8 **Q** I am going to hand you a copy of that notice,
9 and ask you whether you have seen what has now been
10 marked as Exhibit A to this deposition previously.

11 **A** I have seen the notice of the deposition.
12 (Exhibit A was marked for identification.)

13 BY MR. SCAROLA:

14 **Q** Can you tell us, please, what role, if any,
15 you played in gathering documents that have been
16 produced in response to this notice of deposition duces
17 tecum?

18 **A** Together with our counsel, we reviewed
19 documents from our file to determine what was
20 responsive and what wasn't responsive.

21 **Q** I have been handed a package of documents,
22 which I have not yet had an opportunity to review. Can
23 you tell me, please, the procedure that was used to
24 gather those documents? Where did they come from?

25 **A** Those are documents which were maintained in

1 the Fowler White file. We have gathered them since
2 2017 to get all of our file materials together. We
3 have provided our file materials to our counsel.

4 I also reviewed emails from my Outlook box
5 subsequent to delivery of the files to counsel for
6 communications between myself and the Link &
7 Rockenbach firm as it pertain to review of our file
8 materials, and provided those. And they are part of
9 this as well.

10 Q I understand from that response that the
11 documents that we -- have produced today in response to
12 the subpoena -- were assembled into a file.

13 Could you tell us, please, where each of
14 the components of that file originated?

15 MR. IANNO: Object to the form.

16 THE WITNESS: I can't break it down by
17 document. I can tell you what we did in
18 order to gather the Epstein file materials
19 together.

20 BY MR. SCAROLA:

21 Q Thank you. Please do that.

22 A Sure. We did a -- IT did a search of all of
23 our systems, backups for anything pertaining to
24 Mr. Epstein. We looked at the various computers and
25 Outlooks for the attorneys involved in Epstein

1 communications to gather those emails from those, to
2 the extent that they weren't in our backup.

3 It turns out they all were in backup,
4 anyway, so a duplicate of what we found otherwise.

5 We had the hard materials in our file.
6 Again, this is a 2010 through 2012 basic time
7 period. For the most part, a lot of things were
8 being printed, and so we went through the hard
9 materials we had, as well, and then gathered
10 those -- not into a single file. They are
11 maintained in a single area, which is a protected
12 database that I have access to as general counsel of
13 the firm.

14 **Q** What were the search terms that were used in
15 reviewing electronically stored information?

16 **A** I don't know all the search terms we used.
17 We tried to be as comprehensive as we could to gather
18 anything that referred to Mr. Epstein. We used the
19 file numbers. I know that. I don't know of any other
20 terms we used beyond those.

21 **Q** We have learned through earlier
22 representations that have been made in connection with
23 this matter that a large number of boxes were produced
24 for review to the Link & Rockenbach firm, and that
25 subsequently those boxes were delivered to that firm.

1 Did your search encompass any of the
2 contents of those boxes?

3 **A** Yes.

4 **Q** How?

5 **A** As far as the documents that were delivered
6 to the Link firm, they were done in two stages. The
7 first stage, the Link firm came to our office -- I
8 believe it was Scott and mostly Tina Campbell -- to
9 review the documents.

10 They flagged certain documents that they
11 wanted to have received. We provided copies of the
12 hard documents that they wanted copied. We provided
13 duplicate of a disc -- discs, plural -- that they
14 wanted duplicated. The hard copies of the documents
15 that were delivered to the Link firm at that time, a
16 copy of those were also put into my protected
17 directory.

18 The discs were not reproduced, so we did
19 not keep anything else from the disc. They were put
20 back in the original file.

21 The second production, when we gave up the
22 entire file of everything we had on this particular
23 matter, excluding our correspondence clips, which
24 were not produced, and which we have retained in our
25 office, we did not keep a copy of those.

1 **Q** How many discs were contained within the
2 boxes that were produced for review by Link at the time
3 of that initial review?

4 **A** I have not added them up.

5 **Q** As you sit here today, do you know how many
6 discs were included within those boxes?

7 **A** Again, I have not added them up. I just know
8 it was multiple.

9 **Q** Did you personally see the number of discs?

10 **A** I'm not sure I understand that.

11 **Q** Was there a point in time when you looked at
12 the discs in the boxes so that, although you didn't
13 count them, you have some impression as to the number
14 of discs that were there?

15 **A** I did not view the disc within the boxes that
16 were delivered.

17 **Q** So as you sit here today, you have no way to
18 even estimate the number of discs that were produced to
19 Mr. Link?

20 MR. IANNO: Object to the form.

21 THE WITNESS: As I sit here today, I
22 cannot duplicate (sic) the number of discs
23 that were produced to Mr. Link. I believe
24 it can be done.

25

1 BY MR. SCAROLA:

2 Q How?

3 A When we sent the files to archives, there was
4 an index of the file materials by folder. And the
5 index itself references various discs included:
6 deposition discs, other types of discs that were in
7 there. And that would be the only way.

8 Q Do the documents that you produced today
9 include that index?

10 A No.

11 Q Is that index available?

12 A Yes.

13 Q Is there any reason why that index could not
14 be produced today? That is, do you have any reason to
15 believe that the index itself is in some way not
16 subject to production?

17 MR. IANNO: The answer is yes. To a
18 certain extent, it probably needs to be
19 redacted, depending upon what's on it,
20 because if it's anything like our file
21 index, there's probably privileged
22 information about subjects and things like
23 that.

24 MR. SCAROLA: So the answer today is, I
25 don't know.

1 MR. IANNO: The answer is it could be
2 produced, but probably in a redacted, if not
3 entirely privileged form.

4 THE WITNESS: Further, in review of
5 that -- in review of the duces tecum, we
6 reached the conclusion jointly that it did
7 not fall within any of the areas
8 specifically defined by the duces tecum.

9 BY MR. SCAROLA:

10 Q As you sit here today, do you know how many
11 discs there were included within those 30-plus boxes
12 that contained electronically-stored information that
13 originated with the Rothstein Rosenfeldt Adler or
14 Farmer Jaffe law firms?

15 MR. IANNO: Object to the form.

16 THE WITNESS: As I sit here today, I
17 don't know if there were any discs in that
18 file that contains those materials.

19 BY MR. SCAROLA:

20 Q As you sit here today, do you know how many
21 discs there were within those files that had been
22 delivered to Fowler White in connection with procedures
23 followed responding to a subpoena that was issued to
24 the Rothstein Rosenfeldt Adler bankruptcy trustee?

25 MR. IANNO: Objection to form.

1 THE WITNESS: We are talking about in
2 December of 2010?

3 BY MR. SCAROLA:

4 **Q** Yes, sir.

5 **A** It is my understanding, I believe, there were
6 two discs. I believe that's correct.

7 **Q** What were the contents of those discs?

8 **A** From my review of the file materials and
9 discussing the matters with the attorneys who were
10 involved in the case, approximately 27,000 or so pages
11 of documents that subsequently were dealt with in three
12 separate ways.

13 It's my understanding certain documents
14 were considered irrelevant, certain documents were
15 eventually deemed to be attorneys' eyes only, and
16 then documents contained within a privilege log.

17 **Q** Were the documents on the discs divided in
18 that manner?

19 MR. IANNO: Objection to the form.

20 Can you clarify which disc?

21 BY MR. SCAROLA:

22 **Q** The two discs that you are now referencing.

23 **A** I don't know how the documents -- I have
24 never seen those discs.

25 **Q** What is the basis of your statement that the

1 documents on the discs fell into the three categories
2 that you've described?

3 **A** In my review of various emails at the time,
4 subsequent emails going back and forth, discussions
5 with some of the attorneys involved in the matter.

6 **Q** You referenced approximately 27,000
7 documents. Is that the combined total of the pages on
8 both discs that you're referencing?

9 **A** I believe so, because there's an email from
10 Lilly Ann Sanchez, I believe, to Seth Lehrman in which
11 that figure was contained for a number of boxes that
12 were being sent to Seth Lehrman on December 10.

13 **Q** Do you know how many of the 27,000 documents
14 were contained on each of the two discs?

15 **A** I do not.

16 **Q** Did Fowler White receive both discs
17 simultaneously?

18 **A** I believe we received materials at one time.

19 **Q** When?

20 **A** They were picked up from Judge Carney's house
21 on December 7th of 2010 and Federal Expressed from our
22 Palm Beach office to our Miami office that day;
23 received in the Miami office on December 8th, 2010, I
24 believe.

25 **Q** How did you make that determine -- those

1 determinations?

2 **A** The review of emails in the file.

3 **Q** Were either of the two discs marked or
4 labeled in any way?

5 **A** I don't know how they were labeled, if at
6 all.

7 **Q** Do you know whether any discs delivered to
8 Mr. Link were labeled in any way?

9 **A** I don't know.

10 **Q** Describe for me, if you would, please, the
11 efforts that you undertook in order to be in a position
12 to speak on behalf of Fowler White during this
13 deposition.

14 MR. IANNO: Objection to form. On what
15 topics? There's none listed in the notice.

16 BY MR. SCAROLA:

17 **Q** Any topics.

18 **A** Again, I reviewed our file materials of a
19 period of time. I have talked to lawyers involved in
20 the case at the time. I have talked to their
21 assistants involved in the case at the time. I talked
22 to our IT personnel who were here at that time. I
23 talked to a file clerk who was here at that time.

24 **Q** Who are the lawyers within the Fowler White
25 firm at any time to whom you spoke?

1 **A** I talked to Lilly Ann Sanchez, Joe Ackerman
2 and Chris Knight.

3 **Q** Who are the IT personnel to whom you spoke?

4 **A** David Tobin.

5 **Q** Spell the last name for us, please.

6 **A** T-O-B-I-N.

7 **Q** Who was the law clerk to whom you spoke?

8 **A** Chris Hewitt.

9 **Q** Who among those individuals is still a Fowler
10 White employee?

11 **A** Everybody except for Ms. Sanchez.

12 **Q** Did you ever speak to Judge Carney with
13 respect to any matters relating to this disc or these
14 discs?

15 **A** I myself have not.

16 **Q** Did any agent of Fowler White at any time
17 within the last year speak to Judge Carney?

18 MR. IANNO: Object to form.

19 THE WITNESS: Our attorneys.

20 BY MR. SCAROLA:

21 **Q** Was any information conveyed by Judge Carney
22 relayed to you?

23 MR. IANNO: That just calls for a yes
24 or no answer, or I don't know.

25 THE WITNESS: Any information, yes.

1 BY MR. SCAROLA:

2 Q What did Judge Carney relate to you regarding
3 the disc?

4 MR. IANNO: Judge Carney didn't relate
5 anything to him, so I am instructing him not
6 to answer. All of his information came from
7 his counsel.

8 BY MR. SCAROLA:

9 Q Have you taken into consideration any of the
10 information that you received from Judge Carney in
11 giving any of the responses that you have given thus
12 far?

13 MR. IANNO: Object to the form.

14 THE WITNESS: No.

15 BY MR. SCAROLA:

16 Q Have you personally had any conversation or
17 communication with Herb Stettin regarding the matters
18 that are the subject of the contempt proceedings that
19 are pending?

20 A No.

21 Q Have you had any conversation or
22 communication with Charles Lichtman regarding the
23 subject matter of the pending contempt proceedings?

24 A No.

25 Q Have you had any conversation or

1 communication with Robert Critton regarding the subject
2 matter of the contempt proceedings?

3 **A** No.

4 **Q** Have you any conversation or communication
5 with William Scherer regarding the subject matter of
6 the contempt proceedings?

7 **A** No.

8 **Q** Has any agent of Fowler White, to your
9 knowledge, had any communication with Herb Stettin,
10 Charles Lichtman, Robert Critton or William Scherer
11 concerning the subject matter of the contempt
12 proceedings?

13 **MR. IANNO:** Objection to form of the
14 question.

15 **THE WITNESS:** Not that I'm aware of.

16 **BY MR. SCAROLA:**

17 **Q** Upon receipt of the discs from Judge Carney
18 on December 7, what happened to them?

19 **A** They were Federal Expressed on the evening of
20 the 7th to our Miami office, for receipt on the 8th.

21 **Q** To whom were they directed in the Miami
22 office?

23 **A** I believe they were sent to Ms. Sanchez, but
24 I'm not positive.

25 **Q** What is Fowler White's understanding as to

1 why Judge Carney delivered discs to Fowler White on
2 December 7th?

3 **A** For us to apply Bates stamps to the documents
4 contained on that disc, to make a copy of the contents
5 of the disc for sitting -- returning to Farmer Jaffe.

6 **Q** And when you talk about a copy, are you
7 talking about a hard copy?

8 **A** A hard copy of the contents of the disc after
9 being Bates stamped.

10 **Q** Why were the discs delivered to the Miami
11 office?

12 **A** We had the facilities in the Miami office to
13 do this job.

14 **Q** What happened to the discs upon their
15 delivery to the Miami office?

16 **A** The documents from the discs were used for
17 making a set with Bates stamps applied using our firm's
18 software. Eventually the discs were returned to Judge
19 Carney.

20 **Q** Were the discs duplicated in whole or in part
21 prior to returning them to Judge Carney?

22 **MR. IANNO:** Object to the form of the
23 question.

24 **THE WITNESS:** No.

25

1 BY MR. SCAROLA:

2 Q When were the discs returned to Judge Carney?

3 A In December of 2010.

4 Q When in December of 2010?

5 A I believe, as best I can tell from the file,
6 approximately December 28th, 2010.

7 Q How many copies of the Bates-stamped contents
8 of the discs were made by Fowler White?

9 A I believe just one for sending to Farmer
10 Jaffe.

11 Q Was that copy sent to Farmer Jaffe?

12 A Yes.

13 Q How was it transmitted?

14 A By Federal Express.

15 Q When?

16 A December 10th, 2010.

17 Q Where were the discs maintained between
18 December 10, when the copying process was completed,
19 and December 28th, when they were delivered to Judge
20 Carney?

21 A I don't know.

22 Q Did Fowler White ever come into possession of
23 any other disc containing electronically-stored
24 information from either Rothstein Rosenfeldt & Adler or
25 Farmer Jaffe?

1 MR. IANNO: Object to form.

2 THE WITNESS: I don't know for sure. I
3 believe possibly at a later date.

4 BY MR. SCAROLA:

5 Q What is the source of that belief?

6 A It is my understanding -- I have been told --
7 I do not know this from personal knowledge -- that part
8 of the file delivered to Mr. Link's office contained a
9 disc that had materials in it. That disc was contained
10 in a file folder. And in my investigation into that
11 and discussions with people, it's my belief that we
12 received that file folder at a later date than when the
13 original copying took place.

14 Q What date?

15 A I don't know.

16 Q From whom?

17 A Again, I don't know.

18 Q What effort did you make to determine where
19 this disc delivered to Mr. Link came from?

20 A I interviewed the attorneys who were
21 involved. I talked to the file clerk. I talked to the
22 assistants that we still had with us, reviewed our file
23 materials to see if there was any reference in our file
24 materials. And that's pretty much the extent.

25 Q What leads you to believe that the disc that

1 was delivered to Mr. Link from your files originated as
2 a consequence of a disc having been delivered to Fowler
3 White at a later date than December 7, December 8 or
4 December 10?

5 MR. IANNO: Object to form. You can
6 answer if you understand.

7 THE WITNESS: Several aspects. First
8 of all, in my review of the emails at the
9 time of the original copying, Bates
10 stamping, indicate that the discs were being
11 returned to Judge Carney, as contained in an
12 email from Lilly Ann Sanchez to Mr. Lehrman,
13 I believe copied to a number of people.

14 Then we have this file folder. And,
15 again, I am going from what I have been told
16 by third parties, not related to our firm,
17 that the disc was in that file folder.

18 BY MR. SCAROLA:

19 Q Who told you that?

20 A Mr. Link's office.

21 Q Who?

22 A I don't recall.

23 Q Continue please.

24 A We took the file folder and we showed it to
25 the people I referenced earlier, if they recognized the

1 handwriting on the file folder. Nobody recognized the
2 writing on the file folder.

3 We showed the file folder to our clerk,
4 the file clerk pursued it, asked about the
5 handwriting. He said, I don't recognize the
6 handwriting. Furthermore, I don't recognize the
7 type of file folder. That's not something that we
8 traditionally used.

9 This is all from a photograph of the
10 folder that we received.

11 **Q** Is that photograph in these materials that
12 you produced?

13 **A** No.

14 **Q** Continue.

15 MR. IANNO: It kind of is. This is not
16 a photograph. It's a photocopy.

17 THE WITNESS: To be clear, that is not
18 the photograph that we were shown at the
19 time.

20 MR. IANNO: No. This is an actual copy
21 of the file folder. It's just not a
22 photograph of the folder.

23 THE WITNESS: The photograph of the
24 folder actually showed the folder in more
25 detail than what was produced to you

1 today -- or given to you today, I guess, is
2 a more proper term.

3 So between seeing the emails --
4 contemporaneous emails about the disc being
5 returned and my interviews with people, I
6 believe that we received that disc at some
7 later time.

8 I can't tell you when and from whom. I
9 have thoughts, but that's all they are.

10 BY MR. SCAROLA:

11 **Q** Share those thoughts with us, please.

12 MR. IANNO: No. They are just
13 speculation.

14 BY MR. SCAROLA:

15 **Q** That's all right. I want to hear them.

16 **A** Possibly from Judge Carney, when he was no
17 longer involved.

18 **Q** And as you say, that's nothing more than
19 speculation on your part.

20 **A** That's what I said at the beginning.

21 **Q** Have you been provided with any information
22 as to whether Judge Carney recognized the handwriting
23 on that disc?

24 **A** I have --

25 **Q** The one delivered to Mr. Link.

1 **A** I understand. I have not been.

2 MR. IANNO: The disc or the file
3 folder? I just want the record to be clear.

4 MR. SCAROLA: The disc.

5 BY MR. SCAROLA:

6 **Q** But you can also tell me about the file
7 folder. Has the handwriting on the file folder been
8 identified, to your knowledge?

9 **A** Not to my knowledge.

10 **Q** So if I understand your testimony correctly,
11 the only indication to you -- you meaning Fowler
12 White -- that this is not -- this meaning the disc
13 delivered to Mr. Link -- is not a duplicate copy of the
14 disc that was originally received by Fowler White on
15 December 7th, is the type of file folder in which it
16 was stored and the unidentified handwriting on the
17 disc. Is that correct?

18 MR. IANNO: Object to the form.

19 THE WITNESS: It's actually wrong on a
20 number of different levels.

21 BY MR. SCAROLA:

22 **Q** Okay. Tell me.

23 **A** I have no idea when that disc was burned that
24 we are talking about here.

25 MR. EDWARDS: When the disc was what?

1 THE WITNESS: Burned.

2 If it was Judge Carney's copy, it would
3 have been a duplicate disc at about that
4 time.

5 BY MR. SCAROLA:

6 Q At about what time?

7 A When the copies were being made, and sent the
8 hard copies to Farmer Jaffe and the Bates stamps being
9 applied.

10 What I'm saying is, I do not believe that
11 that disc was maintained in our file folder from
12 that time in December until sometime later on.

13 It is not just from the handwriting or the
14 type of folder. Again, it's my review of the
15 emails. It's my review of the file and the actions
16 of lawyers over the next two years fighting over the
17 privilege log and things along those lines.

18 Also, it's my review of how our lawyers
19 handled other documents in the file.

20 Q What is it about the way that Fowler White's
21 lawyers handled other documents in the files that
22 supports your speculation about the origin of the disc?

23 MR. LINK: Object to form.

24 THE WITNESS: There was extreme care
25 being taken to ensure that documents were

1 not seen by inappropriate people. I am
2 referring particularly to the attorneys'-
3 eyes-only documents.

4 There was a request from Roy Black to
5 view these documents. At the time, there
6 were email exchanges as to whether
7 Mr. Indyke would also be entitled to see
8 those.

9 And the idea was, no, he was not going
10 to be entitled to see those, that he would
11 not be shown those, even though he was a
12 lawyer, because everybody wanted to make
13 sure that it was restricted to Mr. Black and
14 not shown outside the scope of attorneys
15 that were involved in the Alan Gray's
16 (phonetics) legal affairs -- scope of the
17 various legal affairs.

18 BY MR. SCAROLA:

19 Q Attorneys'-eyes-only documents were shared
20 with Mr. Black?

21 A I don't know if they were eventually sent to
22 him. I don't recall that kind of email. I know that
23 there was an email about him looking at attorneys'-
24 eyes-only documents, and that led to the discussion
25 they would not be shown to Mr. Indyke because of his

1 relationship with Mr. Epstein. And everybody was in
2 agreement with that.

3 Q Who are the lawyers who reviewed attorneys'-
4 eyes-only documents that originated on the disc?

5 A I don't know.

6 Q Who are the Fowler White lawyers who viewed
7 attorneys'-eyes-only documents on the disc?

8 A I do not know.

9 Q What effort did you make to find out who had
10 viewed attorneys'-eyes-only documents on the disc?

11 MR. IANNO: Object to form.

12 THE WITNESS: They were not part of my
13 investigation.

14 BY MR. SCAROLA:

15 Q Did Fowler White determine why it was that
16 care was being taken to restrict access to information
17 that originated on the discs?

18 MR. IANNO: Object to the form of the
19 question. That's just a yes, no, or I don't
20 know answer.

21 I'm not sure we are going to get into
22 what Fowler White actually did, but you can
23 answer that question.

24 THE WITNESS: Can you state it again,
25 please? Or read it back.

1 BY MR. SCAROLA:

2 Q Yes.

3 Did Fowler White determine why care was
4 being taken to restrict access to information that
5 had originated on those -- on that disc or those
6 discs?

7 MR. IANNO: Same objection.

8 THE WITNESS: Specifically as to why,
9 no.

10 BY MR. SCAROLA:

11 Q Did Fowler White become aware of the entry of
12 a court order that restricted access to information
13 contained on the discs.?

14 MR. IANNO: Object to the form of the
15 question.

16 THE WITNESS: I'm aware of an order
17 entered prior to delivery of the disc in
18 December. I'm aware of discussions
19 apparently regarding a confidentiality
20 order. I don't know if that was ever
21 entered subsequently.

22 BY MR. SCAROLA:

23 Q And what is it that Fowler White knows about
24 an order that was entered prior to delivery of the
25 discs on December 7?

1 MR. IANNO: Object to the form of the
2 question.

3 THE WITNESS: The order says that the
4 disc will be delivered to Fowler White, we
5 will apply the Bates stamp, send the copies
6 out, return the disc, and not retain any
7 copies within Fowler White's files.

8 BY MR. SCAROLA:

9 **Q** Does Fowler White agree that the retention of
10 a copy of that disc is in violation of that order?

11 MR. IANNO: Object to the form of the
12 question. Instruct you not to answer.

13 MR. SCAROLA: The basis of the
14 instruction?

15 MR. IANNO: Work-product privilege and
16 outside the scope of this deposition.

17 You're asking him to opine sitting here
18 as an expert witness on an, ultimately,
19 fact, apparently. But we are not here to
20 agree or disagree as to a court order.
21 You're here to get facts.

22 BY MR. SCAROLA:

23 **Q** Did Fowler White take steps to avoid
24 retention of any copy of the disc?

25 **A** Yes.

1 **Q** What did it do?

2 **A** The method of Bates stamping required that
3 the disc be utilized by Mr. Tobin in our IT department.
4 Afterwards, any reference of those discs was deleted, I
5 believe, from the program and from his desktop
6 computer, temporary folder.

7 The copies were sent to Farmer Jaffe, as
8 required; and the disc returned to Judge Carney, as
9 required.

10 **Q** Who was Fowler White representing at the time
11 that it undertook the task of Bates stamping and
12 producing copies of documents contained on the disc?

13 **A** We were attorneys of record for Mr. Epstein.

14 **Q** Did Fowler White understand that it was in
15 possession of information that was privileged
16 information of an adversary?

17 MR. IANNO: Object to form, but you can
18 answer if you know the answer.

19 THE WITNESS: We understood that there
20 was a claim that certain documents were
21 privileged.

22 BY MR. SCAROLA:

23 **Q** During the period of time in question in
24 November of 2009 and December of 2009 -- excuse me --
25 of 2010, did Fowler White's attorneys keep time records

1 with respect to any services that were being rendered
2 on behalf of Jeffrey Epstein?

3 **A** Yes, they did.

4 **Q** Are those time records still available?

5 **A** Yes.

6 **Q** Are those time records part of what has been
7 produced?

8 **A** No.

9 **Q** Why?

10 **A** They are privileged. Also, I'm not sure
11 they're entirely responsive.

12 **Q** Have you reviewed them in order to make a
13 determination as to whether there are responsive
14 entries in the time records?

15 **A** Not for that purpose, no.

16 **Q** Did any support personnel keep time records
17 with respect to services rendered on behalf of Jeffrey
18 Epstein during the period of time that Fowler White was
19 representing Jeffrey Epstein?

20 **A** Yes.

21 **Q** Who are the support personnel that kept time
22 records for Epstein-related services?

23 **A** There would have been various paralegals who
24 were working on the file.

25 **Q** Who are those individuals?

1 **A** I don't recall their names.

2 **Q** Did you interview any of those individuals?

3 **A** I did not. I did not see any involvement of
4 them with the disc or handling of the disc in my review
5 of the file materials.

6 **Q** Did you review their time records to see
7 whether or not the time records reflected any
8 involvement with the discs?

9 **A** I did.

10 **Q** Did they?

11 **A** Not that I saw.

12 **Q** Did Mr. Tobin keep time records with respect
13 to services that related to the representation of
14 Jeffrey Epstein?

15 **A** No.

16 **Q** Does Mr. Tobin keep time records with respect
17 to any of the services that he performed?

18 **A** No.

19 **Q** Did the equipment used to generate Bates-
20 stamped copies of documents from the disc record the
21 services performed in making those copies?

22 MR. IANNO: Object to form.

23 THE WITNESS: I'm not sure I understand
24 the question.

25

1 BY MR. SCAROLA:

2 Q Photocopy machines sometimes require that an
3 individual identification number be entered by keypad
4 on the machine, and that a case number be entered
5 before the machine will function to generate copies.

6 Was any such equipment that recorded user
7 or use employed with respect to these discs at any
8 time?

9 A That -- again, it's a two-part question. We
10 had the capability at that time to put in file numbers
11 if we were going to bill copies to files. Now it's
12 mandatory. At that time it wasn't mandatory. I have
13 reviewed what was available at the time.

14 Q What did you learn as a consequence of that
15 review?

16 A That there is no indication of copies being
17 made.

18 Q Did you make a determination as to why not?

19 MR. IANNO: Object to form.

20 THE WITNESS: Just a fact.

21 BY MR. SCAROLA:

22 Q Would it not have been part of the firm's
23 policies, practices and procedures to charge 27,000
24 copies to some specific file?

25 MR. IANNO: Object to form.

1 THE WITNESS: Our copy procedures are
2 more client-dependent than they are firm.

3 As you know, we have an insurance
4 practice. All of our insurance clients have
5 different policies regarding photocopies.
6 Exceptions are made in particular instances.

7 BY MR. SCAROLA:

8 Q Was Mr. Epstein charged for copies?

9 A No.

10 Q During the period of time that Fowler White
11 was representing Mr. Epstein, was Mr. Epstein ever
12 charged for copies?

13 A I believe so.

14 Q When was he charged for copies as opposed to
15 when he wasn't charged for copies?

16 MR. IANNO: Object to form.

17 MR. LINK: Mr. Hurley, one second. I
18 think you can answer that question, but we
19 are not waiving attorney-client privilege
20 between the Fowler White law firm and
21 Mr. Epstein, so I don't want any discussion
22 about strategic decisions, okay?

23 THE WITNESS: I understand.

24 It was a general rule that in the
25 normal day-to-day, Mr. Epstein was charged

1 for copying.

2 BY MR. SCAROLA:

3 **Q** Why was there an exception to that rule in
4 connection with generating 27,000 plus copies in
5 connection with the task that you have described having
6 been performed in your Miami office sometime between
7 December 8th and December 28th?

8 MR. IANNO: Object to form. You can
9 answer if you know the answer to that
10 question.

11 THE WITNESS: And I do not know.

12 BY MR. SCAROLA:

13 **Q** What effort did you make to find out?

14 **A** Talked to Ms. Sanchez. She was the attorney
15 who was most involved in this particular part of the
16 process. And she didn't recall.

17 **Q** Was Mr. Epstein charged for the services
18 involved in the copying project, even if not charged
19 for the copies themselves?

20 **A** No.

21 **Q** Was not charging Mr. Epstein for services
22 involved in a copying project of this magnitude in
23 conformity with the standard operating procedures of
24 Fowler White in place at the time?

25 MR. IANNO: Object to the form of the

1 question. I'm going to instruct you not to
2 answer.

3 In compliance with Fowler White's
4 procedures on charging clients are
5 privileged. Whatever they do with regard to
6 their clients is not discoverable,
7 especially not in this proceeding.

8 BY MR. SCAROLA:

9 Q Did you review invoices generated for
10 services rendered to Mr. Epstein during the period of
11 time between the beginning of November and the end of
12 December of 2010?

13 A I did.

14 Q Were there invoices?

15 A There were invoices covering professional
16 services rendered during that period of time, yes.

17 Q Did any of those invoices reflect any
18 services that related directly or indirectly to the
19 receipt, processing, review or delivery of the discs or
20 any electronically-stored information on the discs or
21 any documents generated from the discs?

22 MR. IANNO: Object to the form of the
23 question. That calls for a yes or no
24 answer, without divulging the contents of
25 those invoices.

1 THE WITNESS: Yes.

2 BY MR. SCAROLA:

3 Q What services were reflected on those
4 invoices that related in any way to the discs?

5 MR. IANNO: Object to the form of the
6 question. I am going to instruct you not to
7 answer based on privilege.

8 MR. SCAROLA: The privilege is?

9 MR. IANNO: Attorney-client.
10 Potentially work product as well. I haven't
11 reviewed the invoices to know exactly what's
12 shown on the invoices for services rendered.

13 MR. SCAROLA: So is it fair to say that
14 you are asserting a privilege without having
15 reviewed the documents to determine whether
16 there is a privilege?

17 MR. IANNO: No. My assertion on
18 privilege is that an attorney's invoices to
19 a client are privileged. I said they may
20 also include work product based on what the
21 invoices say.

22 But for certain, the communications and
23 the invoices are attorney-client privilege.
24 I was specifically referring to work
25 product.

1 BY MR. SCAROLA:

2 Q To whom did invoices for services rendered to
3 Mr. Epstein get sent?

4 A I don't recall.

5 Q Who paid those invoices?

6 A I don't know.

7 Q Calling your attention to Exhibit A of the
8 deposition.

9 MR. LINK: Mr. Scarola, is it the one
10 that says Exhibit 1?

11 MR. IANNO: It's the depo notice.

12 MR. LINK: Separate from Exhibit 1?

13 MR. IANNO: Yes. It's the notice of
14 deposition.

15 MR. SCAROLA: I don't have --

16 MR. LINK: You didn't bring copies?

17 MR. SCAROLA: I don't have a third copy
18 of that. I assumed you have a copy of the
19 notice of deposition. I don't have another
20 copy for you.

21 MR. LINK: That's okay.

22 MR. IANNO: I can have copies made, if
23 you want to take a break. It's up to you
24 guys.

25 MR. LINK: I'm okay. Unless Mr. Hurley

1 needs a break. He has been going about an
2 hour.

3 MR. SCAROLA: Your choice.

4 THE WITNESS: I'm fine right now.

5 BY MR. SCAROLA:

6 Q Are the documents that you produced all
7 communications and all records related to the chain of
8 custody of the subject disc?

9 A I don't understand. Is that a question?

10 Q Pardon me?

11 A Was that a question?

12 Q Yes.

13 Did you produce all communications and all
14 records relating to the chain of custody of the
15 subject disc?

16 MR. IANNO: Object to the form of the
17 question.

18 THE WITNESS: I believe so.

19 BY MR. SCAROLA:

20 Q Did you produce all communications and all
21 records relating to any copies that Fowler White made
22 of the disc?

23 A I believe so.

24 Q Did you produce all communications and all
25 records relating to the chain of custody of alleged

1 privileged information derived from documents and/or
2 data contained on the subject disc or any copies of the
3 subject disc?

4 **A** I believe so.

5 **Q** Did you produce all communications between
6 Fowler White and any third party, including but not
7 limited to Jeffrey Epstein, that referenced or
8 discussed the subject disc and/or alleged privileged
9 information derived from documents and/or data
10 contained on the subject disc or any copies of the
11 subject disc?

12 **MR. IANNO:** Object to form of the
13 question, because that clearly called for
14 attorney-client privilege information.

15 You can answer.

16 **THE WITNESS:** Yes, I believe so.

17 **BY MR. SCAROLA:**

18 **Q** Produced it all?

19 **A** Yes.

20 **Q** Did you produce all documents sufficient to
21 identify all persons and/or entities that received
22 copies and/or images of the alleged -- excuse me -- the
23 alleged privilege information derived from the
24 documents and/or data contained on the subject disc or
25 any copies of the subject disc?

1 **A** I believe so.

2 **Q** Did you produce all documents sufficient to
3 identify whether, when and to whom the subject discs,
4 copies of the subject discs, or any data derived from
5 the discs were disseminated?

6 **A** Yes, I believe so.

7 **Q** Did you produce all communications and all
8 records relating to efforts made by Fowler White to
9 comply with the requirement of the court's
10 November 2010 order that is the subject of these
11 proceedings from November 1, 2010 to March 1, 2011?

12 **A** Yes, I believe so.

13 **Q** Did you produce all communications between
14 Fowler White and Special Master Carney regarding the
15 copying of the documents on the disc, the Bates
16 numbering of the documents on the disc or the
17 methodology that we -- we meaning Fowler White --
18 performed to accomplish the copying and Bates-number
19 project?

20 **A** I believe so.

21 **Q** Did you produce all communications between
22 Fowler White and any members of the Farmer Jaffe firm
23 regarding the copying or Bates-numbering process?

24 **A** I believe so.

25 **Q** So as I understand those responses, nothing

1 falling within the descriptions included within the
2 re-notice of taking video deposition duces tecum has
3 been withheld for any reason; is that correct?

4 MR. IANNO: Object to form.

5 THE WITNESS: Within my understanding
6 of the meaning of these requests, the answer
7 is nothing has been withheld.

8 BY MR. SCAROLA:

9 Q Thank you.

10 You have in front of you what has been
11 marked as Exhibit B in Composite Exhibit --

12 MR. IANNO: It hasn't been marked yet.

13 You have the marked copy.

14 (Exhibit B was marked for identification.)

15 MR. LINK: Now we are on Exhibit 1?

16 MR. SCAROLA: We're on Exhibit B. It's
17 a composite exhibit. It includes within in
18 it, numbered exhibits.

19 MR. LINK: Understood.

20 MR. SCAROLA: The first of which is B1.

21 MR. LINK: Like Bingo.

22 BY MR. SCAROLA:

23 Q Going through Exhibit B, the first document
24 is a subpoena duces tecum for deposition documents only
25 issued to Herb Stettin, Trustee in Bankruptcy for

1 Rothstein Rosenfeldt Adler, P.A.

2 Do you recognize this document?

3 **A** I believe I have seen it before.

4 **Q** You understand that it was the issuance of
5 the subpoena that ultimately led to the production of
6 the discs that were delivered to Fowler White, correct?

7 MR. IANNO: Object to form.

8 THE WITNESS: This or something very
9 similar to this, yes.

10 BY MR. SCAROLA:

11 **Q** Go to Exhibit 2, if you would please.

12 Looking at Exhibit B2, do you recognize
13 this May 18, 2010 order entered by United States
14 Bankruptcy Court Judge Raymond Ray?

15 **A** I don't recall having seen this.

16 **Q** I would like you to look at this document
17 now. And I ask you to note that this purports to be an
18 order from Judge Ray of May 18, 2010, entered in
19 response to a motion by trustee Stettin -- Herb
20 Stettin -- for expedited relief seeking a protective
21 order and approving proposed document production
22 protocol.

23 You see that in the initial sentence of
24 the order?

25 **A** I do.

1 **Q** This document goes on, on the next page, to
2 describe a protocol relating to the production of
3 information in response to the subpoena that we just
4 looked at, correct?

5 MR. IANNO: Object to form.

6 THE WITNESS: Again, I haven't read the
7 order.

8 BY MR. SCAROLA:

9 **Q** Well, take a look at it. Paragraph two, the
10 end of the order -- excuse me. The end of the first
11 portion of paragraph two says, "The Court approves the
12 following protocol to govern any demand, subpoena or
13 request for production of RRA's electronically stored
14 information."

15 You see that?

16 **A** Yes.

17 **Q** Is it Fowler White's assertion that Fowler
18 White was never aware of the entry of this order?

19 MR. IANNO: I will object to form and
20 instruct you not answer. It's outside the
21 scope. Goes to privileged information.

22 MR. SCAROLA: And that privilege is?

23 MR. IANNO: Work product. You're
24 asking for his assertions on an issue that's
25 not involved in this case.

1 BY MR. SCAROLA:

2 Q Go to Exhibit Number 3, if you would please.

3 Do you recognize this document?

4 A I have seen this.

5 Q What do you understand this to be?

6 A That this was the order appointing Judge
7 Carney to act as a special master in regards to
8 discovery issues.

9 Q What did Fowler White understand the
10 originally contemplated procedure to be with respect to
11 responding to the subpoena?

12 MR. IANNO: Object to form. At this
13 point, Mr. Hurley, answer Mr. Scarola's
14 question if you know.

15 THE WITNESS: This is not part of what
16 I was -- have reviewed in my scope as
17 general counsel or preparation for this
18 deposition.

19 BY MR. SCAROLA:

20 Q So your answer is, I don't know?

21 A Correct.

22 Q Turn to Exhibit B4, please. Have you ever
23 seen this document before?

24 A I don't recall having seen this.

25 Q Have you had sufficient opportunity to look

1 at it to be able to say you have not seen it
2 previously?

3 **A** Yes. More correctly, I don't recall having
4 seen it previously.

5 **Q** Go to Exhibit B5, please. Have you ever seen
6 this document before?

7 **A** I don't recall having seen this. I may have.
8 I don't recall.

9 **Q** You do agree that Fowler White was
10 representing Jeffrey Epstein on October 15, 2010?

11 **A** Yes.

12 **Q** And Fowler White was involved throughout the
13 proceedings that were occurring in bankruptcy court
14 with regard to compliance with the subpoena issued to
15 the bankruptcy trustee, correct?

16 **MR. IANNO:** Object to form.

17 **THE WITNESS:** I do not know the full
18 extent of the involvement. It would be an
19 assumption on my part.

20 **BY MR. SCAROLA:**

21 **Q** What do you know about Fowler White's
22 involvement in those proceedings?

23 **A** We were representing Mr. Epstein in regards
24 to trying to obtain documents as part of the lawsuit.

25 **Q** And the effort to obtain documents was the

1 issuance of a subpoena to the bankruptcy trustee
2 appointed to control all of the assets, including all
3 documents that were generated in the conduct of
4 business by the Rothstein Rosenfeldt & Adler firm,
5 correct?

6 MR. IANNO: Object to the form of the
7 question.

8 THE WITNESS: It involved the issuance
9 of the subpoena to the trustee in the
10 bankruptcy.

11 BY MR. SCAROLA:

12 Q And Fowler White -- you know from your review
13 of electronic communications -- was directly involved
14 in negotiating the procedures that were to be followed
15 in an effort to obtain that production and to identify
16 privileged materials in connection with that
17 production, correct?

18 MR. IANNO: Object to form.

19 THE WITNESS: In my review, I focused
20 on the procedures leading up to providing
21 the disc to Fowler White. I did not
22 concentrate on what happened prior to that.

23 So as far as what happened between the
24 issuance of the subpoena and to the
25 discussions as to how Fowler White -- or how

1 these discs were to be handled -- the
2 information was to be handled in regards to
3 the development of a privilege log, I didn't
4 review that.

5 The time we were concerned with, we are
6 going to have a privilege log. How do we
7 get the documents handled forward was what I
8 concentrated my review on.

9 BY MR. SCAROLA:

10 **Q** You understood that Fowler White was
11 responsible for assuring that no privileged
12 information, no potentially privileged information
13 could be accessed as a consequence of Farmer White's --
14 excuse me -- Fowler White's involvement in the
15 production procedure, correct?

16 **A** No.

17 THE WITNESS: Sorry.

18 MR. IANNO: Object to the form of the
19 question. I was going to instruct you not
20 to answer, but okay.

21 MR. SCAROLA: I'm not sure -- have
22 you --

23 MR. IANNO: But he answered it.

24 BY MR. SCAROLA:

25 **Q** I haven't heard the answer.

1 **A** The answer was no.

2 **Q** So it is Fowler White's position in this
3 deposition that Fowler White was unaware, as of the
4 time that it came into possession of the discs
5 delivered in response to the subpoena that had been
6 issued at Fowler White's request, that Fowler White had
7 an obligation to protect against any access to
8 privileged or potentially privileged information on
9 that disc; is that correct?

10 MR. IANNO: Object to the form of the
11 question.

12 Go ahead and answer that question.

13 THE WITNESS: First of all, that's
14 different than the prior question.

15 BY MR. SCAROLA:

16 **Q** That's the one I am asking right now.

17 **A** And my response is, we had obligations under
18 an order as to what we were to do, and I believe we
19 complied with that order.

20 **Q** Did you understand that what you were to do
21 included implementing procedures that would guard
22 against access by any adverse party to privileged
23 information or potentially privileged information
24 contained on the discs that were to be delivered to
25 Fowler White?

1 MR. IANNO: Object to form of the
2 question.

3 THE WITNESS: I think what you're
4 stating is beyond what the obligations under
5 the order were.

6 BY MR. SCAROLA:

7 **Q** Could you answer my question, please?

8 MR. IANNO: He did.

9 THE WITNESS: I did.

10 BY MR. SCAROLA:

11 **Q** Is the answer then, no, you didn't believe
12 you had that obligation?

13 **A** No. My answer is, we had obligations under a
14 court order. I believe what you had stated is beyond
15 what the court order says.

16 **Q** In what respect?

17 **A** In that I believe we had obligations while we
18 were in possession of the disc to handle the disc
19 properly; to return the documents and the disc; to make
20 sure there were no copies made while it was in our
21 possession or disseminated to anyone while it was in
22 possession at that time.

23 **Q** Did you understand that Fowler White was
24 prohibited from retaining any information that was
25 contained on those discs?

1 MR. IANNO: Object to the form of the
2 question.

3 THE WITNESS: At that time, yes.

4 BY MR. SCAROLA:

5 **Q** Is it your understanding that that
6 prohibition ended at some point in time?

7 **A** There were times, I believe, in the future
8 when, in fact, copies of some of that disc were
9 produced to us.

10 **Q** Let's identify each of those. When did
11 Fowler White come into possession, subsequent to
12 December of 2010, of any information that originated on
13 the discs?

14 MR. LINK: Object to form of the
15 question. You can answer if you know.

16 THE WITNESS: I don't know the dates.
17 Further, we have never reviewed the contents
18 of the disc, so we are assuming that they
19 were of the disc. We were informed that --
20 I believe I have seen in emails as to the
21 irrelevant emails and attorneys'-eyes-only
22 documents. I believe those were part of the
23 original disc delivered.

24 BY MR. SCAROLA:

25 **Q** So there came a point in time, subsequent to

1 Fowler White receiving the discs, that Fowler White
2 received documents which it was informed had originated
3 on the discs that were irrelevant; is that correct?

4 **A** That's my understanding.

5 **Q** There came a point in time when Fowler White
6 received documents which it understood to have
7 originated on the discs that were being produced for
8 attorneys' eyes only; is that correct?

9 **A** That is my understanding.

10 **Q** What is Fowler White's understanding of the
11 specific restrictions that applied to the attorneys'-
12 eyes-only production?

13 **MR. IANNO:** Object to form of the
14 question. I instruct you not to answer.
15 It's outside the scope of this deposition
16 pursuant to Judge Ray's order.

17 **THE WITNESS:** Jack, let me know when is
18 a good time that I can go to the restroom.

19 **MR. SCAROLA:** You got it.

20 **THE VIDEOGRAPHER:** Going off the
21 record. The time is 11:16 a.m.

22 (A recess was had.)

23 **THE VIDEOGRAPHER:** Going back on the
24 record. The time is 11:36 a.m.

25

1 BY MR. SCAROLA:

2 Q Please turn to Exhibit 6 -- B6. Have you
3 ever seen this document before?

4 A I don't recall having seen this before.

5 Q Turn to Exhibit 7, please. Have you seen B7
6 previously?

7 A I don't recall for sure if I have.

8 Q Do you recall that an issue arose with regard
9 to the cost involved in Bates stamping and printing
10 information from the discs that were ultimately
11 delivered to Fowler White?

12 A Yes.

13 Q Do you recall that Fowler White volunteered
14 to undertake the task of printing and Bates stamping?

15 MR. IANNO: Object to form.

16 THE WITNESS: Yes.

17 BY MR. SCAROLA:

18 Q Do you recall that that was as a consequence
19 of Jeffrey Epstein's refusal to bear the cost of
20 printing and Bates stamping the documents?

21 MR. IANNO: Object to form. I don't
22 know if you want to instruct --

23 Well, on behalf of Epstein -- if your
24 knowledge only came because as a result of
25 Counsel -- because Fowler White was counsel

1 for Epstein and it was based on
2 attorney-client communication, don't answer
3 that.

4 THE WITNESS: And I don't have
5 knowledge one way or another on that.

6 BY MR. SCAROLA:

7 **Q** Turn to Composite Exhibit B8. Have you seen
8 the email of October 25, 2010, from Seth Lehrman to
9 Charles Lichtman?

10 **A** I don't recall having seen this one.

11 **Q** Did you have knowledge of the delivery of a
12 CD that, for whatever reason, could not be opened and
13 read by the Farmer Jaffe firm?

14 **A** I recall seeing an issue with -- a problem
15 with the first CD that was delivered. I don't recall
16 what the issue was.

17 **Q** Do you recall having seen the email exchange
18 on the next page from Charles Lichtman to Gary Farmer,
19 of November 4, 2010?

20 **A** I don't recall having seen this. No.

21 **Q** The next email in this composite is an email
22 of November 9, 2010, first from Robert Carney to Luis
23 Torres, with a copy to Lilly Ann Sanchez.

24 Have you seen that email before?

25 **A** Yes, I have.

1 **Q** Did you see the response from Luis Torres to
2 Judge Carney on November 9, 2010?

3 **A** I believe so.

4 **Q** Do you know whether the deliveries that are
5 discussed in that email exchange took place?

6 **A** I don't know.

7 **Q** The next page includes an exchange of email
8 communications between Judge Carney and various
9 individuals, including Lilly Ann Sanchez on November 9,
10 2010. Did you see that exchange of communications?

11 **A** I don't recall specifically if I saw these.
12 I believe so. But I don't recall for sure.

13 **Q** Do you know whether the exchange of CDs
14 discussed in that email communication took place?

15 **A** I do not know.

16 **Q** Have you seen the letter of November 9, 2010,
17 that is the next document in this composite exhibit?

18 **A** I do not recall having seen this before.

19 **Q** Do you recall ever having seen documents
20 marked in the way in which the disc that is photocopied
21 on the attachment to this letter is marked?

22 MR. IANNO: Object to form.

23 THE WITNESS: I'm sorry. Can you
24 repeat that?
25

1 BY MR. SCAROLA:

2 Q Do you recall ever having seen CDs marked in
3 the way that the CDs that are photocopied as an
4 attachment to this letter --

5 A No.

6 Q -- are marked?

7 A No.

8 Q Have you seen exchanges of communications
9 that are included on the next page that took place on
10 Wednesday, November 10, 2010?

11 A I believe so.

12 Q Copies of these documents were within the
13 records that you reviewed in preparation for this
14 deposition.

15 A I don't recall for sure.

16 Q If they were, they would be included in the
17 large stack of documents that you produced here.

18 MR. LINK: Object to form.

19 THE WITNESS: If I reviewed them in
20 preparation for this deposition, I believe
21 they would be there.

22 BY MR. SCAROLA:

23 Q Go to the next page, if you would please. Do
24 you recall having seen the exchange of communications
25 reflected on this page from Thursday, November 11,

1 2010?

2 **A** Yes.

3 **Q** Does Judge Carney's account of the
4 communication that he had with Lilly Ann Sanchez
5 conform with what Fowler White believes to have
6 happened as of November 10, 2010?

7 **MR. LINK:** Object to form. I instruct
8 you not to answer.

9 **MR. SCAROLA:** Basis of that
10 instruction?

11 **MR. LINK:** Work product, mental
12 impressions, attorney-client privilege,
13 outside the scope.

14 **BY MR. SCAROLA:**

15 **Q** Have you previously seen the exchange of
16 communications on the next page purporting to have
17 occurred November 12, 2010?

18 **A** To make sure we're on the same one, that's
19 the email from Mr. Lichtman to Judge Carney and
20 Mr. Farmer.

21 **Q** There are two emails: one from Mr. Lichtman
22 to Judge Carney, and one from Judge Carney to Gary
23 Farmer.

24 **A** Yes, I have seen this.

25 **Q** Going to the next page. Have you seen that

1 exchange of communications?

2 **A** Yes, I have.

3 **Q** Email exchanges on November 12, 2010.

4 **A** Yes, I have.

5 **Q** Both the November 11 -- excuse me. Both the
6 November 12 exchange at 7:30 a.m. and 7:57 a.m., and
7 the exchange that took place at 8:40 a.m. and 9:24 a.m.
8 are part of the business records of Fowler White?

9 MR. LINK: Object to form.

10 THE WITNESS: I believe so.

11 BY MR. SCAROLA:

12 **Q** Going to the next email that is dated and
13 timed November 12, 2010 at 9:01 a.m., is that a
14 document that you have seen before?

15 **A** I'm not positive.

16 **Q** Are you aware of strong reservations having
17 been expressed by Gary Farmer to turning over the discs
18 containing potentially privileged materials to Jeffrey
19 Epstein's legal counsel.

20 MR. IANNO: You're asking if he was
21 aware then or based on reading this?

22 BY MR. SCAROLA:

23 **Q** Are you aware, as you sit here today, that
24 strong reservations were expressed by Gary Farmer on
25 behalf of his law firm and Brad Edwards to a procedure

1 that involved turning over potentially privileged
2 material to Jeffrey Epstein and his legal counsel?

3 **A** I'm aware that he was questioning the
4 proposed process, yes.

5 **Q** And objected to it?

6 **A** I'm not sure I read these that he objected to
7 it. He was questioning the process and eventually
8 agreed to it.

9 **Q** He questioned the process because he was
10 concerned about the security of potentially privileged
11 information, correct?

12 MR. IANNO: Object to form.

13 THE WITNESS: I presume that's what he
14 was thinking, because that's what seems to
15 be written down here.

16 BY MR. SCAROLA:

17 **Q** Have you previously seen Judge Carney's
18 response to Mr. Farmer --

19 **A** I have.

20 **Q** -- dated November 12, 2010 at 8:40a.m.?

21 **A** I have.

22 **Q** And as part of the business records of Fowler
23 White that you reviewed?

24 MR. IANNO: Object to form.

25 THE WITNESS: Yes. I believe so.

1 BY MR. SCAROLA:

2 Q Have you previously seen the November 15,
3 2010, 9:16 a.m. communication from Lilly Sanchez to
4 Charles Lichtman and Robert Carney?

5 A I have.

6 Q Was that also part of the business records of
7 Fowler White that you reviewed?

8 A Yes. I believe so.

9 Q Did you see the exchange of communications
10 between Judge Carney and Lilly Sanchez that are
11 included on the next page of this composite exhibit --

12 MR. IANNO: Object to form.

13 BY MR. SCAROLA:

14 Q -- including the November 12, 2010, 9:25 a.m.
15 communication and the November 12, 2010, 8:40 a.m.
16 communication?

17 MR. IANNO: Same objection.

18 THE WITNESS: Okay, that starts on the
19 beginning of the prior page.

20 BY MR. SCAROLA:

21 Q Yes, sir. That's where the date of the top
22 email is.

23 A I have seen these before.

24 Q Also part of the business records of Fowler
25 White that you reviewed in preparation for this

1 deposition?

2 **A** I believe so.

3 **Q** Going to the next page. Did you review the
4 November 16, 2010, 3:21 p.m. email from Judge Carney to
5 various individuals including Lilly Sanchez?

6 **A** I have seen this before.

7 **Q** Also part of the business records of Fowler
8 White that you reviewed in connection with this
9 deposition?

10 **A** I believe so.

11 **Q** Did you -- have you seen the email exchange
12 on the next page of this composite exhibit, including
13 the November 23, 2010, 3:34 p.m. email; the
14 November 23, 2010, 5:14 p.m. email; and the
15 November 29, 2010, 4:26 p.m. email?

16 **A** I don't recall specifically if I have or not.

17 **Q** With regard specifically to those emails that
18 reflect that they were directed either to Lilly Sanchez
19 directly or by copy, do you have any reason to doubt
20 the authenticity of those documents?

21 **A** No.

22 **Q** Have you previously seen Joseph Ackerman's
23 email to Brad Edwards of November 29, 2010, at
24 3:30 p.m.?

25 **A** I have.

1 **Q** Was that part of the business records of
2 Fowler White that you reviewed in preparation for this
3 deposition?

4 **A** I believe so.

5 **Q** Have you seen the proposed agreed order that
6 is the next document in this composite exhibit?

7 **A** I'm not positive if I have seen this.

8 **Q** Have you seen preliminary drafts of the order
9 that is now the subject of the pending contempt
10 proceeding?

11 **A** I don't recall specifically.

12 **Q** The next page of this composite exhibit
13 includes an exchange of communications on December 7,
14 2010, at 10:48 and 11:09 a.m. Have you seen those
15 communications previously?

16 **A** I have.

17 **Q** Also the December 7, 10:20 a.m. email from
18 Seth Lehrman to Joseph Ackerman?

19 **A** I don't recall specifically if I saw that or
20 not.

21 **Q** The other two you do specifically recall are
22 part of the business records that -- of Fowler White
23 that you reviewed in connection with your preparation
24 for this deposition?

25 **A** Yes.

1 **Q** Have you previously seen the order of
2 November 30, 2010, that is the next --

3 **A** Exhibit 9.

4 **Q** Exhibit 9 -- B9 in this composite exhibit.

5 **A** I have.

6 **Q** What, if anything, do you know about the
7 distribution of this order within Fowler White after
8 its entry?

9 **A** I know that the attorneys involved in the
10 case were aware of the order. I don't know how or when
11 it was distributed to them.

12 **Q** Who are the lawyers that you know -- who are
13 the Fowler White lawyers, that you know, were aware of
14 the contents of this order?

15 **A** Joe Ackerman, Lilly Ann Sanchez and Chris
16 Knight.

17 **Q** How do you know Joe Ackerman was aware?

18 MR. IANNO: Don't disclose the contents
19 because -- and just tell him what capacity
20 you know that as.

21 THE WITNESS: From my discussions with
22 Joe. And I believe he might have been on
23 the court distribution list.

24 BY MR. SCAROLA:

25 **Q** When did Joe Ackerman become aware of the

1 contents of this order?

2 **A** I don't know.

3 **Q** When did Lilly Ann Sanchez become aware of
4 the contents of this order?

5 **A** I don't know the specific date.

6 **Q** When did Chris Knight become aware of the
7 contents of this order?

8 **A** I don't know the specific date.

9 **Q** Do you know if anyone else within Fowler
10 White was informed of the contents of this order at any
11 time between the entry of the order on November 30th,
12 2010, and January 1st, 2017?

13 **A** I don't know for sure.

14 **Q** Was a copy of this order among the papers
15 included in the files that were made available to Scott
16 Link?

17 **A** I don't know.

18 **Q** In the ordinary course of the business of
19 Fowler White, would this order have been included among
20 the documents that were made available to Mr. Link?

21 **MR. IANNO:** Object to form.

22 **THE WITNESS:** It would have been on a
23 pleading clip likely, but I don't know for
24 sure if it was.

25

1 BY MR. SCAROLA:

2 Q So the response to my question as to whether,
3 in the ordinary course of the business of Fowler White,
4 this order would have been included in Fowler White's
5 file materials made available to Mr. Link, the answer
6 to that question is yes, correct?

7 MR. IANNO: Object to form.

8 THE WITNESS: Ordinarily as an order
9 would be on the pleading clip. I don't know
10 if it was. I don't know if I can give you a
11 better answer than that.

12 BY MR. SCAROLA:

13 Q When you say that ordinarily it would be on
14 the pleading clip, what does that mean?

15 A It means ordinarily at that time --
16 especially when we kept paper files -- the pleadings
17 would be on a pleading clip.

18 Q And describe for the benefit of the court,
19 please, what a pleading clip is as that term is used or
20 was used in Fowler White during this period of time?

21 A It is folder where pleadings are kept
22 together.

23 Q Are they kept together and indexed?

24 A Sometimes.

25 Q In the ordinary course of the business of

1 Fowler White, are documents in the pleading clip
2 indexed in the pleading clip?

3 **A** There was no firm policy at that time.

4 **Q** Regardless of whether there was a firm
5 policy, was the general procedure of Fowler White to
6 index documents in its pleading clips?

7 **MR. IANNO:** Object to form. I'm going
8 to instruct you not to answer. It's outside
9 the scope of the deposition.

10 You know, I will let you ask him about
11 this specific case, but we are not going to
12 get into the general procedures of Fowler
13 White on how they file things.

14 **BY MR. SCAROLA:**

15 **Q** Other than making Mr. Knight, Mr. Ackerman
16 and Ms. Sanchez aware of the provisions of this order,
17 did Fowler White do anything else at all in order to
18 assure that the provisions of the order of November 30,
19 2010, were complied with?

20 **MR. IANNO:** Object to the form of the
21 question.

22 **THE WITNESS:** It is my understanding,
23 yes.

24 **BY MR. SCAROLA:**

25 **Q** What?

1 **A** We made sure that in the Bates-stamping
2 process the files that would have been derived as part
3 of the process were deleted immediately. The copying
4 process did not result in images being made for
5 preservation in our system. The documents were sent
6 immediately upon conclusion to Farmer Jaffe. The discs
7 were returned to Judge Carney.

8 **Q** Did anyone inform David Tobin of the
9 prohibitions included within the November 30, 2010
10 order?

11 **A** I believe so.

12 **Q** Who?

13 **A** Lilly Ann Sanchez.

14 **Q** What is the basis of that belief?

15 **A** My discussions with Lilly Ann.

16 **Q** She told you, I told David Tobin about the
17 provisions of this court order?

18 MR. IANNO: That's attorney-client
19 privilege. Remember, Mr. Hurley is general
20 counsel for the firm.

21 He can tell you as corporate rep what
22 his knowledge is based on, but the substance
23 of those communications are going to be
24 privileged.
25

1 BY MR. SCAROLA:

2 Q Did David Tobin tell you that he knew about
3 the restrictions included within this order?

4 MR. IANNO: Same objection. Instruct
5 you not to answer.

6 BY MR. SCAROLA:

7 Q Did anyone inform support personnel within
8 Fowler White of the provisions of the November 30, 2010
9 order, other than Mr. Tobin?

10 A Again, I believe so.

11 Q Who?

12 A I don't know who specifically would have told
13 them. But my information -- sorry.

14 Q Which support personnel were informed?

15 A I do not know.

16 Q What were they told?

17 MR. IANNO: Object to form. Instruct
18 you not to answer.

19 MR. SCAROLA: Let's take a couple
20 minutes, please.

21 THE VIDEOGRAPHER: Going off the
22 record. The time is 12:04 p.m.

23 (A recess was had.)

24 THE VIDEOGRAPHER: Going back on the
25 record. The time is 12:12 p.m.

1 MR. SCAROLA: I have no further
2 questions at this time, subject to
3 overruling of all the unfounded objections
4 you have raised.

5 MR. IANNO: Or sustaining them.

6 MR. SCAROLA: Or sustaining them, as
7 the case may be.

8 MR. IANNO: There you have it. Good
9 enough.

10 MR. LINK: I sustain them right now.

11 CROSS-EXAMINATION

12 BY MR. EDWARDS:

13 Q Mr. Hurley, are you aware that Link &
14 Rockenbach have represented that that firm received a
15 disc with the handwriting "Epstein Bate Stamp" and the
16 disc contained over 27,000 Bates-stamped documents
17 received from Fowler White?

18 MR. IANNO: Pages. Not documents.
19 Pages.

20 MR. EDWARDS: Pages.

21 THE WITNESS: A lot of parts to that
22 question. The answer is, I am aware that
23 they have said that they received a disc
24 with the number of documents on there. I
25 don't recall if we talked about the rest of

1 the parts of your question, as far as how
2 the disc was titled or framed or written on.

3 BY MR. EDWARDS:

4 **Q** My understanding from your testimony today is
5 you have not personally reviewed the disc.

6 **A** I have never seen the disc.

7 **Q** And so personal knowledge, you're not sure
8 what's on the disc or what's not on the disc?

9 **A** That is correct.

10 **Q** But based on the representation that has been
11 made, that this is a disc that was within a box that
12 was delivered to Link & Rockenbach from Fowler White,
13 do you have any reason to believe that that statement
14 is not accurate?

15 **A** I don't have a reason to believe that
16 Mr. Link is not being truthful.

17 **Q** So as you sit here, you believe the disc that
18 we're talking about is a disc that was actually in a
19 Fowler White box, and a copy was delivered, along with
20 boxes of Epstein material, to Link & Rockenbach?

21 **A** That's the assumption I have.

22 **Q** And based on all the information that you
23 have to this point, you have no reason to dispute that
24 assumption?

25 **A** That is correct.

1 Q Just based on what I have heard today, it's
2 your understanding, after having reviewed all of the
3 materials that were available to you and speaking with
4 the people who you thought were important people to
5 speak with in your investigation of determining where
6 the disc came from and whether or not it originated
7 from Fowler White, do you believe that you have talked
8 with everybody who could provide you any of that
9 information?

10 MR. IANNO: Object to form.

11 THE WITNESS: Yes.

12 MR. IANNO: Object to the form of the
13 question.

14 MR. LINK: I sustain that objection, by
15 the way.

16 BY MR. EDWARDS:

17 Q It was a poor question, but you know what I'm
18 saying.

19 Have you talked -- are there any
20 witnesses -- after we have had discussions today,
21 are there any other people that you think have
22 information that could help us with the chain of
23 custody of that particular CD?

24 MR. IANNO: Object to form. Answer if
25 you know.

1 THE WITNESS: Not that I can think of.

2 BY MR. EDWARDS:

3 Q Are there any additional documents, business
4 records of Fowler White -- documents that you have not
5 yet reviewed but would like to review to help solidify
6 any conclusions that you have reached?

7 A No.

8 Q So it's my understanding from your
9 testimony -- tell me if anything about this is
10 inaccurate -- that two CDs were FedExed from Special
11 Master Carney to Lilly Ann Sanchez. Is that correct?

12 A That's incorrect.

13 Q Okay.

14 A Two CDs were picked up from Judge Carney on
15 the December 7 by our Palm Beach office and FedExed by
16 our Palm Beach office to the Miami office.

17 Q Those two CDs that were picked up on
18 December 7th and delivered to the Miami Fowler White
19 office on December 8th, do you know if those CDs had
20 any type of markings on them at all?

21 A I have never -- I did not see the CDs, and
22 before being shown exhibits today, have never seen any
23 photocopies of the CDs or had them described to me.

24 Q Are you aware of any photocopies of the CDs
25 having been made by Fowler White?

1 **A** As far as the photocopy of the physical CD?

2 **Q** Right. So that you would know what the cover
3 looked like.

4 **A** Not that I recall after seeing them.

5 **Q** Were there any materials such as time records
6 that were or are available to you that would help make
7 a determination what the CDs -- the cover of the CDs
8 looked like when they arrived December 8th, 2010, to
9 Fowler White?

10 **A** No.

11 **Q** The people that you spoke with -- Lilly Ann
12 Sanchez, Joe Ackerman, Chris Knight and your IT --
13 David Tobin --

14 **A** Correct.

15 **Q** -- did you discuss with them what the CDs
16 looked like when they arrive to Fowler White on
17 December 8, 2010?

18 MR. IANNO: You can answer whether you
19 discussed it, but not the substance.

20 THE WITNESS: No.

21 BY MR. EDWARDS:

22 **Q** Do you know what -- do you know which
23 computer within Fowler White was used to insert the CDs
24 that were received on December 8th that ultimately led
25 to the printing process?

1 **A** Yes.

2 **Q** And have you reviewed the hard drive of that
3 computer to see if there were any images or copies of
4 the CD or the documents thereon left on that computer?

5 **A** I have not personally reviewed it. That
6 computer is no longer in use at Fowler White.

7 **Q** Do you know where that computer is?

8 **A** It was discarded when we changed our computer
9 hardware.

10 **Q** Is there a central hard drive to the firm
11 where copies of things that are saved on a particular
12 computer system are also saved to a backup?

13 **A** It depends on how they are saved. If they're
14 saved to the actual hard drive, the CPU or personal
15 directory, the answer is no.

16 **Q** The process that you understand took place on
17 December 8th is the CD is placed into a computer, the
18 computer system is used to Bates stamp or Bates number
19 all of the documents on that CD and then it's printed?

20 MR. IANNO: Object to form of the
21 question.

22 THE WITNESS: Generally correct, a
23 little bit more than that.

24 BY MR. EDWARDS:

25 **Q** Okay.

1 **A** They are put onto -- in this particular case,
2 would have been using Mr. Tobin's desktop computer.

3 You apply the program, which I believe is
4 XL Acrobat Pro or one of the Acrobat programs to do
5 the Bates stamp, using a temporary folder on his
6 desktop. That is then burned onto a CD with the
7 Bates stamps.

8 What I don't know is if the print order is
9 sent from the desktop or is used from the CD that
10 was burned.

11 **Q** So I just want to understand the burning
12 process. So it comes in as two CDs.

13 **A** Correct.

14 **Q** Presumably one CD has some of these 27,500
15 documents and some of the other CD has the remainder of
16 these 27,500 documents, right?

17 **A** I have no idea. We received two CDs, I
18 believe, then they were put onto a CD.

19 **Q** To your knowledge, between the two CDs was
20 over 27,000 documents?

21 **A** My understanding.

22 **Q** Only one CD can go in at a time; is that
23 right?

24 **A** Correct.

25 **Q** So the CD is going to be inserted into the

1 computer. And is it your understanding, then, that CD
2 is first uploaded to the temporary folder in
3 Mr. Tobin's computer?

4 **A** Yes.

5 **Q** That CD is then ejected. Second CD is put
6 in. And that second CD, the contents thereof, are
7 uploaded to the temporary folder on Mr. Tobin's
8 computer.

9 **A** That is correct.

10 **Q** Then a new CD -- a clean CD -- is put in, and
11 the contents from the temporary folder that are
12 comprised of whatever was uploaded from CD one and
13 whatever was uploaded from CD two are combined and put
14 onto this fresh CD.

15 MR. IANNO: Object to the form of the
16 question.

17 THE WITNESS: Once the Bates stamps are
18 applied, that is put onto the new CD.

19 BY MR. EDWARDS:

20 **Q** So the new CD would be CD one plus CD two,
21 plus Bates numbers. That would be the contents of the
22 new CD.

23 MR. IANNO: Object to form.

24 THE WITNESS: That would be my
25 presumption.

1 BY MR. EDWARDS:

2 Q The original two CDs that arrived, those are
3 CDs that Fowler White then sends back to Judge Carney,
4 correct?

5 MR. IANNO: Object to form.

6 THE WITNESS: I believe they were
7 returned to Judge Carney.

8 BY MR. EDWARDS:

9 Q Do you know how they were returned to Judge
10 Carney?

11 A There's a Federal Express label to Judge
12 Carney, I believe, by Federal Express.

13 Q Do you know what date that the two CDs were
14 Federal Expressed to Judge Carney?

15 A I saw a Federal Express label from
16 December 28th.

17 Q The single CD that has now the 27,000 plus
18 documents Bates numbered, was that CD also sent to
19 Judge Carney?

20 A I believe so.

21 Q What information are you relying on to -- for
22 your belief that a total of three CDs relating to this
23 copy job were sent back to Judge Carney?

24 A We have an email indicating that CDs are
25 being sent to Judge Carney. I have, I believe, seen

1 emails which indicate to me that Judge Carney had a
2 disc with Bates-stamped documents on them that were
3 being utilized for months afterwards, to a certain
4 extent. Nobody ever raised an objection that they
5 didn't have the CDs.

6 **Q** Because the original two CDs that came in,
7 they had no Bates stamp on them.

8 **A** Correct.

9 **Q** So even after this process where the contents
10 from those two CDs are uploaded to this temporary
11 folder, that's not going to change the composition of
12 those first two CDs.

13 **A** They were not changeable.

14 **Q** So the new CD would be the only CD that would
15 have the Bates-stamped numbers on them?

16 **A** That's my understanding.

17 **Q** Was there any additional copy at that time in
18 2010 of the single CD that had the Bates-stamped copies
19 on them?

20 **A** I'm not aware of other CDs being made with
21 Bates-stamp numbers.

22 **Q** So to the best of your knowledge, at that
23 point in time, December of 2010, Fowler White has taken
24 in two CDs, upload them to a temporary file, placed on
25 a new CD the contents of both of those -- the contents

1 of both of those CDs, this time with Bates numbers on
2 it, and all three CDs were sent to Judge Carney.

3 **A** That's my understanding.

4 **Q** There was one copy of hard copy documents
5 derived from the new CD that would be hard copies of
6 all of the contents of the new CD, which would include
7 the Bates-stamped numbers on it.

8 **A** That's my understanding.

9 **Q** Those documents, then, if I understand your
10 testimony, were FedExed out December 10th to be
11 delivered to Farmer Jaffe December 13th.

12 **A** I don't know the delivery date. They were
13 FedExed December 10th.

14 **Q** And what was sent to Farmer Jaffe was the
15 hard copy documents only.

16 **A** That is what appears to be reflected in the
17 email I reviewed.

18 **Q** And from those 27,000-plus documents, it's
19 your understanding that, eventually, one batch of
20 documents was produced to Fowler White labeled
21 something along the lines of irrelevant?

22 **MR. IANNO:** Object to form. You can
23 answer if you know.

24 **THE WITNESS:** I'm not sure. I'm not
25 sure.

1 BY MR. EDWARDS:

2 Q I thought I understood --

3 A I believe so. I'm not positive.

4 Q Your understanding is there was a second
5 batch that was delivered and it was labeled or titled
6 attorneys' eyes only.

7 MR. IANNO: Same objection.

8 THE WITNESS: Again, I believe that we
9 received documents that were labeled
10 attorneys' eyes only. The how and when they
11 were delivered to Fowler White, I do not
12 know, or if they were even delivered
13 separately from the irrelevant documents.

14 BY MR. EDWARDS:

15 Q Okay. I wasn't try to imply by my question
16 that they were delivered separately. Just that -- of
17 the documents that were delivered, there was a batch --
18 could have been delivered on the same day -- but there
19 was a batch that was labeled irrelevant. There was
20 another batch labeled attorneys' eyes only.

21 A There was a batch which I understood was
22 irrelevant. There was a batch I understand were
23 attorneys' eyes only.

24 Q And the attorneys'-eyes-only batch is a batch
25 that Roy Black contacted Fowler White, as he wanted to

1 view that particular set of documents.

2 MR. IANNO: Object to form of the
3 question.

4 THE WITNESS: I believe there was a
5 request from Roy Black to have seen the
6 attorneys'-eyes-only documents.

7 BY MR. EDWARDS:

8 Q Did you produce -- was there correspondence,
9 emails or otherwise from Roy Black or Roy Black's
10 office to that effect?

11 A I don't recall if there was an email from
12 Mr. Black's office.

13 Q Have you produced emails or correspondence
14 from Mr. Black about the viewing of the attorneys'-
15 eyes-only documents?

16 MR. IANNO: Object to form.

17 THE WITNESS: I don't believe so.

18 BY MR. EDWARDS:

19 Q In preparation for your deposition, do you
20 remember viewing these -- any correspondence that would
21 have allowed for your testimony today about the fact
22 that Roy Black contacted Fowler White to view those
23 documents?

24 MR. IANNO: Object to the form of the
25 question.

1 THE WITNESS: My preparation review for
2 today's depo was restricted to the issues
3 which I considered was the scope of my
4 deposition, which was the handling of the
5 disc and the privileged documents on the
6 disc.

7 In my review of the file, I recall
8 seeing that exchange pertaining to the
9 attorneys' eyes only.

10 The only reason it was relevant to me
11 and why I recall it is because of the care
12 that was being expressed about making sure a
13 restriction that -- whatever exposure there
14 was to those documents was a very limited
15 exposure and would never work their way back
16 to Mr. Epstein.

17 BY MR. EDWARDS:

18 Q It was relevant to you because the care the
19 attorneys at Fowler White took to protect the
20 attorneys'-eyes-only documents, you would expect to be
21 the same type or greater care to the universe of
22 documents that was delivered and placed on a CD and
23 printed and sent to Farmer Jaffe.

24 MR. IANNO: Object to form.

25 THE WITNESS: I believe we would be

1 equally cautious as to all of those types of
2 documents.

3 BY MR. EDWARDS:

4 Q Retaining a CD with all of the documents that
5 came in that day, Bates-numbering -- Bates-numbered
6 documents that came in that day would be inconsistent
7 with the type of care that you saw in your review of
8 how the attorneys'-eyes-only documents were treated by
9 the attorneys that were handling the case?

10 MR. IANNO: Object to form.

11 THE WITNESS: An intentional keeping of
12 a disc or make of an extra disc at that
13 time -- first of all, I have seen nothing in
14 the file at all -- any indication of that.
15 And it would not be what we would have done
16 or should have done.

17 BY MR. EDWARDS:

18 Q And you would agree there's no way to
19 accidentally make another copy of the disc, right?

20 MR. IANNO: Object to the form.

21 THE WITNESS: You know, I would not
22 think so.

23 BY MR. EDWARDS:

24 Q At some point in time in early 2018 -- I
25 think it's January -- Mr. Link and, I think, Tina from

1 his office came to Fowler White to review boxes of
2 Epstein's material.

3 **A** That is correct.

4 **Q** While there, flagged certain documents or
5 items that they wanted copies of.

6 **A** That is correct.

7 **Q** Were you watching over that review and
8 flagging process?

9 **A** I was not.

10 **Q** Was anybody from Fowler White watching over
11 that review and flagging process?

12 **A** We were not in the room with them.

13 **Q** Prior to anyone from Mr. Link's office
14 arriving, did someone from Fowler White inventory the
15 boxes that were being reviewed by Mr. Link?

16 **A** We had an inventory from the closed file
17 process.

18 **Q** When did the closed file process occur?

19 **A** 2014 or early 2015.

20 **Q** How detailed is the inventory from the 2014
21 closed file process?

22 **A** It contains box numbers. It contains labels
23 of folders within the box.

24 **Q** Within that inventory, was there an
25 indication of a CD labeled "Epstein Bate Stamp"?

1 **A** The inventory did not state that, no.

2 **Q** Is there anything from your review of the
3 inventory that would indicate that there was a CD
4 containing Epstein Bates stamped documents?

5 **A** Nothing mentioning any CD with Epstein Bates
6 stamped documents.

7 **Q** Was there anything mentioning the retention
8 of any Epstein Bates stamped documents?

9 MR. IANNO: Object to form.

10 THE WITNESS: I don't recall if there
11 was any reference to Bates-stamped documents
12 whatsoever in there. I don't recall.

13 BY MR. EDWARDS:

14 **Q** From your review of the inventory -- is it
15 inventory list?

16 **A** It's inventory.

17 **Q** From your review of the inventory, is there
18 an indication that, at that point in time when the file
19 was closed in 2014, Fowler White had in its possession
20 the CD that is -- that's now contained -- the
21 handwriting that says "Epstein Bate Stamp"?

22 MR. IANNO: Object to form.

23 THE WITNESS: There is nothing in the
24 inventory that mentions that CD.

25

1 BY MR. EDWARDS:

2 Q There was -- was there any reference to any
3 disc on that inventory?

4 A Yes.

5 Q How many discs were referenced?

6 A I covered this with Mr. Scarola. I never
7 counted it up.

8 Q Were there specific notations about the
9 various discs that were referenced in the inventory to
10 give you some idea of what might be on those discs?

11 A Sometimes.

12 Q What were some of those things that would
13 have been on the disc?

14 A Depositions --

15 MR. IANNO: Don't give anything that
16 would give away work product or anything
17 like that.

18 BY MR. EDWARDS:

19 Q Was there any description of any of the discs
20 that was in this inventory that would now lead you to
21 believe that what was on those discs were these
22 "Epstein Bate Stamp" documents?

23 A No.

24 Q Is there anything on that inventory that
25 tells you, as you sit here, that in 2014, Fowler White

1 had in its possession the CD?

2 MR. IANNO: Object to form.

3 THE WITNESS: Nothing that specifically
4 mentions the CD.

5 BY MR. EDWARDS:

6 Q Is there anything that mentions anything that
7 would tell you that Fowler White had in its possession
8 that CD or the documents that were on that CD.

9 MR. IANNO: Object to form.

10 THE WITNESS: Nothing that mentions the
11 CD or the documents.

12 BY MR. EDWARDS:

13 Q I thought I understood from your previous
14 testimony that you believe, on behalf of Fowler White,
15 that the CD in question was received sometime later
16 after 2010 --

17 A Correct.

18 Q -- by Fowler White.

19 A Correct.

20 Q What is it that makes you believe that that
21 CD was received back by Fowler White sometime later?

22 MR. IANNO: Objection. Asked and
23 answered.

24 THE WITNESS: Yeah. A number of
25 different factors taken together. First,

1 the file folder that I have been advised the
2 CD was located in, the writing on the folder
3 was not recognized by anybody in our group.
4 The language used doesn't seem to be the
5 same as what I have been told now is on the
6 disc. The folder itself was not the type of
7 folder we used.

8 Looking at the file itself, there is
9 what appears to be a chain of custody
10 showing return of the disc to Judge Carney.
11 There then is a complete absence of any
12 mention of the disc or the privilege
13 documents themselves as opposed to the
14 privilege log dispute from that point
15 forward, until we get to the first week of
16 March 2018.

17 So there's nothing to indicate that we
18 would have retained a disc or looked at a
19 disc. And the file in which the disc itself
20 was in was not the type of file that we
21 would have expected to have seen.

22 BY MR. EDWARDS:

23 Q Is there anything on the inventory that leads
24 you to believe that the CD that we are talking about
25 that says "Epstein Bate Stamp" was not in the

1 possession of Fowler White in 2014?

2 **A** You can't tell from the inventory itself, no.

3 **Q** We talked about the file folder. One of the
4 things that you mentioned is the type of folder is not
5 the type of folder that Fowler White typically had.
6 That's one of the things that tells you this is
7 something that arrived at Fowler White after 2010.

8 **A** That was a piece of all the information I
9 received, yes.

10 **Q** The handwriting on the file folder was not
11 handwriting that was recognized -- recognizable by any
12 of the attorneys that were working on the case back
13 then.

14 **A** That is correct.

15 **Q** Is the handwriting that was on the file
16 folder consistent with the handwriting that was on the
17 disc that says "Epstein Bate Stamp"?

18 **MR. IANNO:** Object to form.

19 **THE WITNESS:** I never saw the disc
20 before today, so I don't know.

21 **MR. LINK:** Did you see the disc today?

22 **THE WITNESS:** I saw pictures of a disc
23 here if that's what we're talking about.
24 Are you talking about the disc supposedly
25 that was contained in the file? I have

1 never seen that disc at all.

2 MR. LINK: Just for the record, that
3 disc has been sealed. It's not been made
4 available.

5 MR. EDWARDS: I thought that there was
6 a photocopy of that disc.

7 MR. IANNO: No.

8 MR. EDWARDS: Cover of that disc --
9 there hasn't been.

10 MR. IANNO: He hasn't seen it then and
11 he hasn't seen it today.

12 MR. LINK: It's sealed.

13 BY MR. EDWARDS:

14 Q How did you get the copy of file folder and
15 the, I guess, alleged contents of the file folder in
16 which this disc was kept?

17 MR. IANNO: Object to form. He never
18 said he got the contents of the file folder.

19 THE WITNESS: I received --

20 MR. IANNO: You can tell him how you
21 got it, but that's as far as you can go.

22 THE WITNESS: I don't recall if it was
23 directly from Mr. Link or whether it was
24 Mr. Link to our attorneys to me. I received
25 a picture or a photocopy of the folder

1 cover.

2 BY MR. EDWARDS:

3 Q I misunderstood your prior testimony. I
4 apologize.

5 Is it your understanding that there was
6 just a file folder and the only thing that was
7 inside that file folder was the CD?

8 MR. IANNO: Object to form.

9 THE WITNESS: It's my understanding
10 that there was a file folder. I have been
11 told that within that file folder there was
12 a CD. I have not been told about anything
13 else within that file folder.

14 BY MR. EDWARDS:

15 Q Is it your understanding that the only person
16 that was sent a CD with these documents Bates numbered
17 on them was Special Master Carney?

18 A I have not seen any document indicating
19 anybody else got a Bates stamped CD.

20 Q Which is what leads you to believe that if
21 this was a CD received from some outside source after
22 2010 to Fowler White, then it likely came from Special
23 Master Carney.

24 MR. IANNO: Object to form.

25 THE WITNESS: Part of, again, the

1 overall bit of information, but it's one of
2 the factors, yes.

3 BY MR. EDWARDS:

4 Q What are the other factors?

5 A What I talked about. It has his name on it.
6 We don't know who else it went to or would have seen
7 it. There's nothing in our file to indicate that there
8 was any other copy made for anybody else. There is no
9 mention of either the disc or the contents of the disc
10 in eight years. So it's -- that all leads together it
11 came back from somebody, I believe. And the only
12 person I could conclude, which is my speculation, was
13 Judge Carney.

14 Q Because he's the only person that you knew to
15 have had a copy of that disc?

16 A I have no idea what happened to the content
17 of the disc once it left our possession.

18 Q Do you know whether it arrived back to Fowler
19 White in 2011 or whether it arrived back in 2017?

20 A I do not know. I do not know.

21 Q You only know that it arrived back to Fowler
22 White sometime after it left Fowler White, which is
23 December of 2010, and it was -- and the latest it could
24 have arrived back is sometime before January 2018.

25 MR. IANNO: Object to form.

1 THE WITNESS: Assuming all of the
2 information I have is truthful information,
3 the answer is yes.

4 BY MR. EDWARDS:

5 **Q** Is there anything else that helps you pare
6 down when that disc might have been received back by
7 Fowler White?

8 **A** If the information I received is true, I do
9 know that the folder was in the Fowler White file as of
10 2011.

11 **Q** How do you know that?

12 **A** It's on the disc.

13 **Q** That's on the inventory?

14 **A** Yes. There's nothing that describes the
15 contents of the folder on the inventory, just the title
16 of the folder.

17 **Q** So by the title, you know that it's -- by the
18 title you believe that it's the same folder?

19 **A** The title is similar to the photocopy of the
20 cover that I was provided.

21 **Q** Who created that inventory?

22 **A** Chris Hewitt.

23 **Q** And he's the one who would have created that
24 entry into the inventory?

25 **A** Yes.

1 **Q** Did you speak with Chris Hewitt about when
2 the file folder might have come into the possession of
3 Fowler White?

4 **A** I asked him that.

5 **Q** And?

6 MR. IANNO: You can tell him the
7 results of your investigation.

8 I just don't want there to be a waiver
9 of privilege.

10 You can tell him information that's
11 known to the corporation for the purpose of
12 this deposition, but not privileged
13 communication.

14 THE WITNESS: He has no recollection of
15 that.

16 BY MR. EDWARDS:

17 **Q** Do you know whether the file folder was
18 delivered to Fowler White by mail, hand delivery or
19 what form?

20 **A** Do not know.

21 **Q** Is there a process of inventorying
22 information as its received by Fowler White such as
23 this?

24 **A** No.

25 **Q** Do you know who would have handled the file

1 on behalf of Fowler White whenever it was received?

2 **A** No.

3 **Q** Do you know if it was received while Fowler
4 White was still active counsel for Jeffrey Epstein?

5 **A** I believe not, but I do not know for sure.

6 **Q** What makes you believe that Fowler White was
7 no longer active counsel for Jeffrey Epstein when
8 Fowler White received the file?

9 **A** There's no reference to a file or a disc in
10 any document that I reviewed.

11 **Q** After Fowler White discontinued representing
12 Jeffrey Epstein, that was sometime in 2012, right?

13 **A** We withdrew in May of 2012, I believe.

14 **Q** What happened to the file folder that the --
15 bad question.

16 What happened to the boxes of Epstein
17 material at that time?

18 **A** The file was maintained in our office until
19 2014, beginning of 2015, when it was sent to our
20 off-site storage facility, which I believe was Iron
21 Mountain.

22 **Q** And at that point in time, the file that we
23 were talking that allegedly contained this CD in 2015
24 was in Fowler White's possession?

25 **A** The folder was shown on the inventory, yes.

1 **Q** And was the first time that a full inventory
2 was performed in 2014?

3 **A** It would have been when we began the closing
4 process. It's my understanding that was in late 2014.

5 **Q** Do you know if this particular entry into the
6 inventory was done in late 2014 or 2015?

7 **A** We cannot determine that.

8 **Q** You tried to determine that?

9 **A** Yes.

10 **Q** Was there any communication that you found
11 from Special Master Carney or anyone else about the
12 delivery of the file folder to Fowler White?

13 **A** No.

14 **Q** Did Lilly Ann Sanchez -- strike that.
15 Did your investigation reveal that anyone
16 at Fowler White reviewed the file folder when it
17 came into Fowler White?

18 **A** No.

19 **Q** In 2018 when Mr. Link goes down to Fowler
20 White and flags certain items, including this CD, what
21 was the process for copying that CD for Mr. Link?

22 **A** A copy of the CD was just burned from that
23 CD.

24 **Q** After that particular CD was flagged, was
25 there an attorney for Fowler White that reviewed the

1 documents that were flagged before copies were made?

2 **A** No.

3 **Q** Was it the same IT person, David Tobin, who
4 performed this copying?

5 **A** I don't know.

6 **Q** Is David Tobin still here?

7 **A** Yes.

8 **Q** What was the process for burning the CD in
9 2018?

10 **A** I don't know how the CDs were burned from the
11 other CDs. I just know that there was nothing retained
12 from the CDs in our system, because I have checked.

13 **Q** So whatever the process was, it did not leave
14 any residue on the part -- on the Fowler White hard
15 drive?

16 **A** That is correct.

17 **Q** But the result was that a copy of the CD was
18 provided to Mr. Link and a copy of the CD was retained
19 by Fowler White in 2018?

20 MR. IANNO: Object to form.

21 THE WITNESS: As of the delivery of the
22 copies to Mr. Link's firm, that is correct.

23 BY MR. EDWARDS:

24 **Q** Was there a time when the copy that was
25 retained by Fowler White was also turned over to

1 Mr. Link?

2 **A** Yes.

3 **Q** When was that?

4 **A** That was the first week -- beginning of
5 March 2011.

6 **Q** So how long did Fowler White retain a copy of
7 the CD before -- strike that.

8 When -- after Mr. Link tagged -- flagged
9 the CD for copy and Fowler White made a copy,
10 between that point in time, how long was it that
11 Fowler White retained a copy of that CD before
12 turning the second CD over to Mr. Link?

13 **A** The copy --

14 MR. IANNO: Object to form.

15 Between what point in time?

16 BY MR. EDWARDS:

17 **Q** Between the time that the CD was copied by
18 Fowler White and the time that it was turned over to
19 Mr. Link, what period of time was that?

20 **A** The copy of the CD was given to Mr. Link's
21 firm, I believe, the 1st of February with the other
22 documents.

23 The file was sent back to our archives on
24 January 27th. It was then retrieved on
25 February 27th -- it might have been January 29th it

1 went back. It was the last week in January. It was
2 retrieved on February 27th, and I believe the file
3 was picked up on March 1st.

4 **Q** Did anyone at Fowler White review the
5 contents copy of the CD that Fowler White retained that
6 was entitled "Epstein Bate Stamp".

7 **A** No.

8 **Q** Of the -- strike that.

9 While Lilly Ann Sanchez was -- was working
10 as an attorney at Fowler White in 2010 was she a
11 shareholder?

12 **A** Yes.

13 **Q** Is the same title true for Joe Ackerman?

14 **A** I don't know if he was a shareholder in 2010
15 or not.

16 **Q** How about Chris Knight?

17 **A** Yes.

18 **Q** Is David Tobin still in the same position now
19 that he held then?

20 **A** I don't know if his title has changed, but
21 his function is the same.

22 **Q** Did you find any emails between David Tobin
23 and Joe Carney directly?

24 **A** No.

25 **Q** Were there any emails between Judge Carney

1 and anyone at Fowler White during the year 2012?

2 **A** I don't know.

3 **Q** All of the emails that you were able to
4 locate between Fowler White and Judge Carney have been
5 produced?

6 **MR. IANNO:** Object to form.

7 **THE WITNESS:** All the emails between
8 Fowler White and Judge Carney which
9 referenced the handling of the disc have
10 been produced.

11 **BY MR. EDWARDS:**

12 **Q** Were there emails between Fowler White and
13 Judge Carney that reference issues other than the
14 handling of the disc that you reviewed?

15 **A** I believe there were emails regarding the
16 privilege log and how that was to be handled. There
17 were some issues regarding him filing an entry report
18 of some kind that I saw in there. There were matters
19 going on with him for a period of time. I don't know
20 the dates of those.

21 **BY MR. EDWARDS:**

22 **Q** Any other issues that you remember seeing
23 between Judge Carney and Fowler White?

24 **A** I'm not sure there were issues between Judge
25 Carney and Fowler White. I just saw on the circulation

1 list where these matters were before Judge Carney and
2 we were on the email chain.

3 Q The three categories, I think you called
4 them, of documents irrelevant, attorneys' eyes only,
5 those were documents that were hard copies received
6 back from Farmer Jaffe by Fowler White, to your
7 knowledge?

8 MR. IANNO: Object to the form.

9 THE WITNESS: That's my understanding.

10 BY MR. EDWARDS:

11 Q And then there were documents logged on a
12 privilege log which were not provided to Fowler White.

13 A That is my understanding.

14 Q And so other than the handling of the CD that
15 we discussed, the other issues that you remember being
16 discussed between Judge Carney and Fowler White related
17 to the filing of the privilege log and the issues
18 dealing with the privilege log and his interim report?

19 MR. IANNO: Object to form.

20 THE WITNESS: I think there are issues
21 regarding jurisdiction and who was to be
22 hearing the matter going forward. I wasn't
23 paying any attention to the contents because
24 I was focused on trying to see is there any
25 mention regarding the disc or these

1 particular documents. That's what I was
2 looking for.

3 You know, if I happened to see other
4 information while I was reviewing the emails
5 for that, you know, I may have a
6 recollection of it, as I mentioned right
7 now.

8 BY MR. EDWARDS:

9 Q Was there anything in Fowler White's
10 possession that you knew was something that was
11 written -- handwritten by Special Master Carney?

12 A I don't recall seeing anything that I knew
13 for sure that was written by Judge Carney.

14 Q Were you ever able to identify the
15 handwriting that was on the copies of the file folder
16 that you received?

17 A No.

18 Q I don't have anything else.

19 MR. SCAROLA: I have a few follow-ups.

20 MR. IANNO: Mr. Link, do you have any
21 questions?

22 MR. LINK: I just have a couple, but I
23 don't mind waiting.

24 MR. SCAROLA: That's okay. Go ahead.
25

CROSS-EXAMINATION

1
2 BY MR. LINK:

3 Q Mr. Hurley, would you take a look at B7,
4 please, that was marked by Mr. Scarola? If you look
5 at -- take a look at page two, Mr. Hurley, if you
6 would. Maybe you can help me understand -- because we
7 have been talking about a disc that is the subject of
8 this contempt proceeding that had 27,524 pages on it, I
9 believe.

10 If you look at paragraph six, this is a
11 motion that was filed by the firm Farmer, Jaffe,
12 Weissing Edwards, Fistos and Lehrman. It says the
13 trustee has produced to that law firm two discs that
14 contain approximately 74,000 pages. Do you see
15 that?

16 A I do.

17 Q As you sit here, do you know how many pages
18 were on the disc that were delivered by Judge Carney to
19 the Palm Beach office of Fowler White that were sent to
20 the Miami office of Fowler White to be reproduced?

21 A I know that we produced approximately 27,000
22 pages of documents.

23 Q Do you know if there were -- as you sit here,
24 it says that the corporate rep for Fowler White -- what
25 paragraph six is referring to regarding two CDs which

1 contain approximately 74,000 pages that were produced
2 by the trustee to Farmer Jaffe?

3 **A** I don't.

4 **Q** If you look at paragraph seven, there is a
5 third CD that was produced by the trustee to Farmer
6 Jaffe that was corrupted. Do you see that?

7 **A** I see that.

8 **Q** If you look at paragraph eight, Farmer Jaffe
9 is making request for additional days to complete a
10 privilege log, because based on the two CDs that were
11 not corrupted and whatever additional pages were on the
12 corrupted CD, they would have at least 74,000 page to
13 review. Do you see that?

14 **A** I see that.

15 **Q** Do you have any knowledge as Fowler White's
16 corporate representative that Fowler White received
17 74,000 pages from the Farmer Jaffe firm?

18 **A** I do not.

19 MR. LINK: I have no further questions.

20 MR. IANNO: Mr. Scarola.

21 REDIRECT EXAMINATION

22 BY MR. SCAROLA:

23 **Q** When did it first come to Fowler White's
24 attention that it was in possession of a CD that
25 contained information that was subject to restrictions

1 included within the November 10 order?

2 MR. IANNO: Object to form of the
3 question.

4 THE WITNESS: One more time for me,
5 please.

6 BY MR. SCAROLA:

7 Q When did it first come to Fowler White's
8 attention that it was in possession of a CD that was
9 subject to the November 10 order of Judge Ray?

10 MR. IANNO: Object to the form of the
11 question. Assumes fact not in evidence,
12 proper hypothetical, argumentive.

13 THE WITNESS: I presume you're talking
14 about after the December 10th, 2010 issues.

15 BY MR. SCAROLA:

16 Q Yes, sir.

17 A Are we talking about what led to --

18 Q The contempt proceeding.

19 When did it first come to Fowler White's
20 attention that it possessed a CD in violation of the
21 November 10 order of Judge Ray?

22 MR. IANNO: Object to the form of the
23 question.

24 THE WITNESS: On or about March 8th.

25

1 BY MR. SCAROLA:

2 Q Of what year?

3 A This year.

4 Q How did it come to your attention?

5 A I received a heads-up -- it was either a call
6 or an email from Mr. Link saying that there was an
7 issue with something that was contained in our file
8 that we produced.

9 Q Did Mr. Link or anyone from Link & Rockenbach
10 ever asked Fowler White how it came to be in possession
11 of a CD with allegedly privileged emails on it?

12 MR. IANNO: Object to form.

13 MR. LINK: You can answer yes or no.

14 That's it.

15 THE WITNESS: Yes.

16 BY MR. SCAROLA:

17 Q When?

18 MR. IANNO: Just answer when.

19 MR. LINK: Answer when.

20 THE WITNESS: About the same time
21 frame.

22 BY MR. SCAROLA:

23 Q Approximately March 8th.

24 A After the initial advice of the issue, yes.

25 Q And was it Mr. Link who raised that issue

1 with you on approximately March 8th?

2 **A** I believe so.

3 **Q** I'm going to request that the package of
4 documents produced by you this morning be marked as
5 Exhibit C.

6 (Exhibit C was marked for identification.)

7 BY MR. SCAROLA:

8 **Q** Describe to us, if you would please, what is
9 contained within Exhibit C?

10 **A** Exhibit C contains the materials, that in
11 conjunction with our attorneys, we deem to be in our
12 possession and responsive to the duces tecum part of
13 the notice of today's deposition.

14 **Q** Are all of these documents documents that
15 were located by you within the business records of
16 Fowler White?

17 MR. IANNO: Object to form.

18 THE WITNESS: I believe they all came
19 from our file materials.

20 BY MR. SCAROLA:

21 **Q** Is it correct that they have not been changed
22 or altered in any way since they were originally
23 included in the files?

24 **A** We have not modified anything.

25 MR. IANNO: Long half hour by the way.

1 You must be billing by the hour.

2 MR. SCAROLA: It's gonna get a little
3 longer.

4 THE WITNESS: There are a lot of red
5 marks in this file that appear
6 spontaneously.

7 BY MR. SCAROLA:

8 **Q** Did Fowler White retain any of the documents
9 that were delivered -- retain copies of any of the
10 documents that were delivered to Link & Rockenbach?

11 MR. IANNO: Object to form. Asked and
12 answered.

13 THE WITNESS: Of the documents in which
14 they asked for hard copies, a copy of those
15 was electronically put into my restricted
16 general counsel file.

17 BY MR. SCAROLA:

18 **Q** Did Fowler White retain a copy of any of the
19 discs that were turned over?

20 **A** No.

21 **Q** It appears from the documents included within
22 Composite Exhibit C, that, at the time of the delivery
23 of documents to Link & Rockenbach, an inventory was
24 prepared of those documents; is that correct?

25 **A** The inventory that was mentioned in the

1 emails is basically our closed file inventory index
2 with the details removed from that. It's listed by box
3 number, I believe. And that was what was assigned upon
4 delivery.

5 MR. LINK: Let me just make sure I
6 understand. You did not produce to
7 Mr. Scarola an index of documents that I and
8 my staff selected?

9 THE WITNESS: No.

10 MR. LINK: Okay.

11 THE WITNESS: There is no such index.

12 MR. LINK: Okay. I just want to make
13 sure my work product wasn't being shared.

14 BY MR. SCAROLA:

15 Q There were two deliveries to Link &
16 Rockenbach, correct? An initial delivery that
17 consisted of specifically requested documents tabbed by
18 Mr. Link at the time of his first review of the files.

19 A That's correct.

20 Q And then a subsequent request was made for
21 all of Fowler White's Epstein-related files, and a
22 second delivery occurred of all of the files, correct?

23 MR. IANNO: Object to form.

24 THE WITNESS: With the exception of --
25

1 BY MR. SCAROLA:

2 Q With the exception of correspondence --

3 A And billing.

4 Q -- and billing.

5 A Correct.

6 Q And at the time of that second delivery, an
7 inventory was compiled, correct?

8 MR. IANNO: Object to form.

9 THE WITNESS: The index from the closed
10 file which listed the various boxes was
11 modified for signature by the courier who
12 was picking up the boxes from our office to
13 reflect box numbers being delivered.

14 BY MR. SCAROLA:

15 Q Did that inventory include anything that --
16 other than the box numbers?

17 A There was no description of what was being
18 delivered other than box numbers.

19 Q Mr. Link requested of you personally the
20 confidentiality agreement that was in effect with
21 respect to this case, correct?

22 A That is correct.

23 Q How did you respond to that request?

24 MR. LINK: You can answer how you
25 responded, not what you responded.

1 THE WITNESS: I'm not sure if I
2 responded in writing or whether I discussed
3 it with him on the phone.

4 BY MR. SCAROLA:

5 Q And what was your response?

6 MR. IANNO: Object to the form. I
7 instruct you not to answer. Attorney-client
8 privilege, joint defense work product and
9 outside the scope. Doesn't have anything to
10 do with the chain of custody of the disc.

11 You want to join?

12 MR. LINK: Join. Almost everything you
13 do.

14 MR. EDWARDS: You don't want to carve
15 anything out.

16 MR. LINK: Anything inappropriate I
17 don't join.

18 MR. IANNO: We are on the record here.

19 BY MR. SCAROLA:

20 Q The number of the boxes delivered to Mr. Link
21 was 44.

22 A I didn't count the boxes.

23 Q Let me hand you from Exhibit C this
24 particular page.

25 MR. IANNO: You want to just give him

1 the Bates number?

2 MR. SCAROLA: Yes. 110.

3 How kind of you.

4 MR. IANNO: Make it simple. That way
5 you don't have to give up your copy.

6 THE WITNESS: The answer to your
7 question is no.

8 BY MR. SCAROLA:

9 Q What is the reference to 44 boxes?

10 A That is the total number of boxes in the
11 file, which would have include boxes containing billing
12 records and correspondence.

13 Q Which would lead one to believe that if 36
14 boxes were delivered to Mr. Link, there were eight
15 boxes of billing records and correspondence?

16 A I believe there were eight boxes of billing
17 records or correspondence, which you're seeing in my
18 office right now.

19 Q Bankers Boxes?

20 A Yes. Not good for the decor.

21 Q There was a second group of documents. Those
22 are the ones there? May I see them?

23 MR. LINK: For the record, these are
24 the documents, Mr. Ianno, that you did not
25 provide me a copy of.

1 MR. IANNO: I don't think they're
2 responsive yet. But I'm happy, if
3 Mr. Scarola wants to deem them responsive,
4 to provide you with a copy and make them
5 part of the production.

6 MR. SCAROLA: I will tell you shortly.

7 BY MR. SCAROLA:

8 **Q** When were the copies in this package made?

9 **A** I believe yesterday.

10 **Q** From what were they made? Were they printed
11 from a CD?

12 **A** No. When I was reviewing areas in my general
13 counsel file to make sure that we had been as inclusive
14 as possible in responding to the duces tecum, I was
15 going through the copy of documents produced that I
16 kept in my file to Mr. Link, the one we referenced a
17 few minutes ago at the time of the January review.

18 And I wanted to look at the -- what was
19 there and see specifically if there was anything in
20 the box where this folder was maintained. And when
21 I opened the copy, I saw that there appears to be
22 other documents that were there as well.

23 The first page was an email from Brad
24 Edwards. There was a Bates stamp on the bottom. I
25 closed the file and picked up the phone and called

1 our lawyers.

2 MR. IANNO: That's it. That's where
3 the documents came from.

4 MR. LINK: Can you help me better
5 understand? Are these --

6 MR. SCAROLA: How about if he helps me
7 better understand first and maybe that will
8 help you, but let me finish my question.

9 MR. LINK: I can live with that.

10 MR. SCAROLA: Thank you. I appreciate
11 it.

12 BY MR. SCAROLA:

13 Q I don't understand.

14 A When, as I testified earlier, a copy of the
15 hard copies of the documents delivered to Mr. Link's
16 firm were put electronically into my restricted general
17 counsel file.

18 Q You need to stop there for me, okay?
19 Where are these copies coming from?

20 A Our copier center.

21 MR. IANNO: I think he's saying where
22 are the -- the documents were in the file.

23 THE WITNESS: These are documents that
24 were delivered -- that Mr. Link's firm had
25 tagged for production the first time --

1 after coming to our office the first time in
2 January.

3 BY MR. SCAROLA:

4 Q So there were hard copies --

5 MR. LINK: Mr. Scarola, hang on just
6 one second.

7 So you're sharing with Mr. Scarola
8 documents that I selected that would be part
9 of my work product. Is that --

10 MR. IANNO: Let's take a break.

11 MR. LINK: I object to that. I don't
12 know what's in there. But anything I put a
13 sticker on is my work product.

14 MR. IANNO: Let's take a break. We
15 have to discuss this.

16 THE VIDEOGRAPHER: Going off the
17 record. The time is 1:14 p.m.

18 (A recess was had.)

19 THE VIDEOGRAPHER: Going back on the
20 record. The time is 1:22 p.m.

21 BY MR. SCAROLA:

22 Q Could you explain to us, please, the origin
23 of documents Bates stamped FW0000183 through 215?

24 MR. LINK: Before he does that,
25 Mr. Scarola, I would like to see what it is

1 that we are talking about because of my
2 concern that Fowler White kept a copy of my
3 work product, those documents that I
4 selected for copying, which I was unaware
5 of -- I believe I was unaware of -- and then
6 searched those documents to respond to the
7 subpoena that you issued.

8 So I'm the only who hasn't seen what
9 everybody is talking about, and I would like
10 to --

11 MR. SCAROLA: No, you're not the only
12 one who hasn't seen them. Pursuant to
13 instruction, I haven't seen them either.

14 And before I agree that they can be
15 turned over to you, I want to know what they
16 are and where they came from.

17 MR. IANNO: So where they came from is
18 Fowler White's files.

19 MR. SCAROLA: Yes. But that doesn't
20 tell me where they came from in order to get
21 into Fowler White's files.

22 MR. IANNO: You can ask him.

23 Do you know where these documents
24 originally came from?

25 THE WITNESS: I have no idea where they

1 came from.

2 BY MR. SCAROLA:

3 **Q** Do you know whether any of these documents
4 are documents that were contained on the CD that was
5 turned over to Mr. Link?

6 **A** I do not know.

7 **Q** Were these documents documents that were in
8 Fowler White's files in hard copy at the time that the
9 Fowler White files were reviewed by Mr. Link?

10 **A** I believe they were in our files then.

11 **Q** So these are copies of what was in Fowler
12 White's files that Mr. Link requested be copied at the
13 time he reviewed those files; is that correct?

14 MR. LINK: Hold on. So this is the
15 work product issue that I'm not waiving.

16 MR. IANNO: We are going to instruct
17 him not to answer based on that.

18 You're getting into the selection
19 process. If they were in the files, he has
20 answered that.

21 MR. LINK: I can stipulate to this,
22 Mr. Scarola, because I'm not trying to
23 hinder what you're doing. I just don't want
24 to share my work product.

25 I will say that every document that we

1 copied and was delivered would have been in
2 the file at the time I looked at it.

3 There was no source other than the
4 documents that Mr. Hurley put in the
5 conference room. Does make sense?

6 BY MR. SCAROLA:

7 Q Looking at these documents, there are
8 approximately 30 pages here.

9 A Okay.

10 Q Mr. Link, by virtue of his own testimony,
11 clearly asked for more than 30 pages to be copied and
12 delivered to him, correct?

13 MR. LINK: That's fine.

14 THE WITNESS: Yes.

15 MR. LINK: Hundreds of pages.

16 BY MR. SCAROLA:

17 Q How did this subset of documents come into
18 existence? From all of those documents that Mr. Link
19 asked to be copied, how did this subset of documents
20 come into existence?

21 MR. IANNO: I'm going to instruct him
22 not to answer, but I will tell you this.
23 Those are documents that we deem may be
24 responsive to your subpoena -- to your
25 notice. That's how they came into

1 existence, because counsel went through and
2 collected documents in order to comply with
3 the notice. Don't make an assumption --

4 BY MR. SCAROLA:

5 **Q** How large --

6 MR. IANNO: Don't make an assumption
7 that -- I will leave it at that.

8 BY MR. SCAROLA:

9 **Q** How large a volume of documents was reviewed
10 from which these approximately 30 pages were selected?

11 MR. IANNO: Don't answer. That's going
12 to be -- you can answer, generally, how many
13 pages you reviewed to comply with the
14 notice, but not how many you selected of
15 that, because we have another 181 pages that
16 were produced that I didn't have a question
17 on.

18 You can answer generally how many pages
19 you reviewed in preparation for the response
20 to the duces tecum.

21 THE WITNESS: I can't even give you a
22 rough estimate of how many pages I looked
23 at.

24 BY MR. SCAROLA:

25 **Q** What is the distinction between the documents

1 that are a part of Composite Exhibit C and these 30
2 pages?

3 **A** Those are documents I saw that had a Bates
4 stamp number on them different and apart from other
5 Bates stamps schemes that we had for documents in the
6 file.

7 It's my understanding -- I have never seen
8 a document printed from the disc. Even though they
9 were not brought to the mediation, I specifically
10 didn't look at them. But I understood they were
11 Bates stamped with consecutive numbers on them.
12 They had no other designation.

13 I saw there was an email on page one from
14 Brad. It had a numbered Bates stamp on the bottom.
15 I then flipped to the next page electronically and
16 saw that also was an email concerning Brad with a
17 Bates stamp, and I closed the folder and I picked up
18 the phone.

19 **MR. LINK:** Mr. Scarola, do you mind
20 sharing with me? Are those Bates stamps at
21 the bottom of the documents.

22 **MR. SCAROLA:** There are two Bates
23 stamps on some of these pages, not all of
24 them. There's an FW Bates stamp, which I
25 assume to be Fowler White.

1 MR. IANNO: That's correct.

2 MR. SCAROLA: And then above that on
3 some of these pages is a second unlettered
4 Bates stamp number.

5 And for the record, those numbers are
6 03005, 03114, 05111, 05629, 06198, 06577,
7 07965, 09335. 09336, 10965, 10966, 12291,
8 19661, 26480, 01686, 02620, 0 -- excuse
9 me -- 10586, 02913, 03082, 05952. An
10 un-Bates stamped page, which is, FW204.

11 MR. IANNO: It is not just a blank
12 page.

13 MR. SCAROLA: It's not a blank page.

14 MR. LINK: I thought they were
15 sequential. They are not sequential?

16 MR. SCAROLA: Oh, no.

17 They are sequential -- the Fowler White
18 numbers are sequential --

19 MR. LINK: But not the other Bates
20 stamps.

21 MR. SCAROLA: Page 206, no Bates stamp.
22 207, no other Bates stamp. 208, no other
23 Bates stamp. 209, no other Bates stamp.
24 210, no other Bates stamp. 211 is 26762,
25 27494, 05676, 08355, 08420.

1 That completes the recitation of the
2 Bates stamped numbers of the documents
3 included in this package.

4 MR. LINK: Mr. Scarola, do you mind if
5 we ask Mr. Hurley which of the duces tecum
6 items he thought these were responsive to?

7 MR. SCAROLA: No, I don't mind that.

8 MR. IANNO: He's not going to answer.
9 You're not going to get into his mental
10 impression of counsel.

11 MR. SCAROLA: Well, I don't think that
12 that's mental impressions at all. In a
13 request for production, you're required to
14 coordinate the produced materials with the
15 specific item that's requested, and I don't
16 know why it would be any different for a
17 duces tecum. So --

18 MR. IANNO: Or, in the way they were
19 kept in the ordinary course of business.

20 Mr. Hurley go ahead and answer, if you
21 can.

22 MR. LINK: You have the duces tecum --

23 THE WITNESS: I understand. They were
24 contained, apparently, in our file at the
25 time that the file was made available for

1 viewing by somebody else.

2 I don't know what those documents are.
3 Again, I haven't looked at them. But I had
4 concerns from what I saw on the top of them.
5 And I thought potentially that might fall
6 under -- I believe it was paragraph six --
7 dissemination.

8 BY MR. SCAROLA:

9 Q What did you see at the top of the documents
10 that alerted you to -- concern about these documents?

11 MR. IANNO: Asked and answered.

12 THE WITNESS: It had Brad Edwards'
13 email up there.

14 MR. LINK: Mr. Scarola, can you for the
15 record state -- I can see on the first page
16 it says something. What does that say?

17 MR. SCAROLA: It says, J. Carney, dash,
18 Printing of CD Issue.

19 BY MR. SCAROLA:

20 Q Do you know whose handwriting that is?

21 A I have no idea.

22 Q Was this part of the documents inside some
23 folder?

24 A I have no idea. I saw them electronically.
25 I'm presuming they were.

1 MR. LINK: Jack, do you mind if I ask a
2 question, see if we can --

3 MR. SCAROLA: Go ahead.

4 RE CROSS-EXAMINATION

5 BY MR. LINK:

6 **Q** So, do I understand that, in responding to
7 this subpoena duces tecum, sir, by Mr. Scarola, on
8 behalf of Mr. Edwards, that you did a search of the
9 documents that are maintained on your general counsel
10 section of your computer, and that those documents were
11 a set of everything that my law firm asked to be
12 copied?

13 **A** It is my understanding they were included
14 within those documents.

15 **Q** Were there other documents contained within
16 the set on the computer that you searched, other than
17 documents which I hand selected?

18 **A** I'm not sure I understand the question.

19 **Q** Well, I'm trying to understand if the
20 documents on your computer that you searched were the
21 only documents that were there because I hand selected
22 them, or were there other documents from the files in
23 there as well.

24 **A** Actually, no. It contained emails from our
25 files. It was -- it was a number of electronic

1 documents. This was a very small subset of everything
2 that was in there.

3 Q No, no. What I'm trying to understand is if
4 the parameters -- the documents you searched included
5 only the documents that we would have put stickers on
6 at the time we reviewed them, or the documents we put
7 stickers on and additional documents from Fowler
8 White's files that you included --

9 A It's broader.

10 Q It is much broader.

11 A It's much broader. They were a small part of
12 what I reviewed.

13 FURTHER REDIRECT EXAMINATION

14 BY MR. SCAROLA:

15 Q Are these documents a subset of documents
16 that only included documents reviewed by Mr. Link?

17 MR. IANNO: Object to the form of the
18 question. You can answer.

19 THE WITNESS: The way I located them
20 were within a subsection of those documents.

21 BY MR. SCAROLA:

22 Q The Link-selected documents?

23 A Yes.

24 Q These particular documents were chosen from
25 that subset based upon the fact that they had Brad

1 Edwards' name at the top of the documents?

2 **A** A little bit more than that.

3 **Q** What more than that?

4 **A** I saw the cover sheet that is on the first
5 page of that, and saw that that was similar to the
6 cover sheet of the disc that apparently is the source
7 of all of this controversy that had been provided to me
8 earlier, that said Judge Carney - Printing Issue.

9 Then as I opened that, I saw that there
10 were 31 total documents, I believe. And so I looked
11 at the next document to see what the next document
12 was, and that's when I saw Brad Edwards and the
13 Bates stamp. And it was the proximity of the two
14 within what I was looking at that actually made me
15 concerned.

16 **Q** So are these documents all of those documents
17 that fell within some subfile labeled Judge Carney
18 Printing of CD Issue?

19 MR. IANNO: Object to form.

20 THE WITNESS: That I don't know. They
21 were found together in what I reviewed.

22 BY MR. SCAROLA:

23 **Q** When you say they were found together, what
24 does that mean?

25 **A** Again, I'm looking at documents that are

1 electronic.

2 Q Yes, sir.

3 A There is a folder there. The first document
4 of the folder has the first page for you, the Judge
5 Carney - Printing Issues. I open the folder. I see
6 that. I look at the top, I see there are 30 others
7 documents. Turn the page, go flip the page to page
8 two, electronically through the folder. That's when I
9 see the Brad Edwards email and the number at the
10 bottom. I go to page three, I see another Brad Edwards
11 email, number at the bottom.

12 The fact that they were Brad Edwards
13 emails with numbers at the bottom, and the fact that
14 they were in proximity to something which is similar
15 to the folder, I got concerned.

16 Q Did the folder contain any documents other
17 than those documents in the Bates stamp range 183
18 through 215?

19 A I don't know if those were actually in the
20 folder. The electronic folder --

21 Q That's my next question.

22 A Okay.

23 Q Did the folder contain anything other than
24 documents in the Bates stamp range 183 through 215?

25 MR. LINK: Object to form.

1 THE WITNESS: The folder -- I don't
2 know what was in the folder itself -- the
3 hard folder. If you are talking about the
4 original hard folder, I have no idea,
5 other --

6 BY MR. SCAROLA:

7 **Q** I'm talking about the electronic folder that
8 you were reviewing.

9 **A** The electronic folder that I was reviewing,
10 you have a complete copy of everything that was in it.

11 **Q** Okay. There was nothing in the folder that
12 is not included in this package. And there is nothing
13 in this package that was not included in the folder; is
14 that correct?

15 MR. LINK: Object to the form.

16 BY MR. SCAROLA:

17 **Q** This is the entire -- a copy of that entire
18 folder.

19 **A** Correct.

20 **Q** How did this -- how did this folder get
21 created?

22 MR. IANNO: Object to form.

23 THE WITNESS: Mechanically, I don't
24 know. It was, again, in my general counsel
25 file as being part of the documents which

1 were copied.

2 BY MR. SCAROLA:

3 **Q** By Mr. Link -- well, copied at Mr. Link's
4 request?

5 **A** Yes.

6 **Q** So this particular folder did not exist until
7 Mr. Link requested documents in 2018?

8 **A** The electronic folder?

9 **Q** The electronic folder.

10 **A** No.

11 **Q** It did not exist until then?

12 **A** Absolutely not.

13 **Q** And you have no idea how all of these
14 documents wound up in the same folder?

15 **A** I do not.

16 **Q** Do you know who created the folders?

17 MR. LINK: Are we now talking
18 electronic folder?

19 MR. SCAROLA: Yes. The electronic
20 folder.

21 THE WITNESS: The electronic folders
22 were created by the copy center as they were
23 copying the documents. And they were
24 created and kept together as they were
25 presented for copying. So there is --

1 whatever -- they received those together and
2 they kept them together.

3 MR. LINK: Can you ask him what he
4 means by they received these together?

5 BY MR. SCAROLA:

6 **Q** The copy center received groups of documents
7 that were marked by Mr. Link and kept the documents in
8 the same groups in electronic folders.

9 **A** The documents came from a box. The documents
10 were kept with the boxes at the time of copying. The
11 selected documents were kept. They were put into
12 folders by box number. And this is the entire contents
13 of that particular box number.

14 MR. LINK: Mr. Scarola, to help you --
15 I am not going to share what I selected --
16 but the process was there were 36 boxes or
17 something in there -- and like all
18 production, we put stickies on certain
19 documents for them to copy and left.

20 So the concept that he's describing of
21 folders and things that they created is --
22 and I don't know what you're looking at --
23 but is inconsistent with what we did, so I
24 don't fully understand what he did based on
25 the way we went about putting stickers on

1 various documents.

2 MR. SCAROLA: Is that your handwriting?

3 MR. LINK: No.

4 MR. SCAROLA: Is it your paralegal's or
5 assistant's handwriting?

6 MR. LINK: No. Why would our
7 handwriting be in their file?

8 MR. SCAROLA: Well, it would in their
9 file if you designated for copying a group
10 of documents that you labeled Judge Carney
11 Printing of CD issue.

12 MR. LINK: It's not my handwriting and
13 it's not Tina's.

14 MR. IANNO: Okay. So we're not going
15 to speculate.

16 BY MR. SCAROLA:

17 Q Do we have any idea where page 0000183 came
18 from?

19 MR. IANNO: You have already asked him.
20 You can answer it again.

21 THE WITNESS: The answer is no.

22 MR. IANNO: There's the answer.

23 BY MR. SCAROLA:

24 Q Yeah. But there's more.

25 No but what?

1 **A** I think when I saw it, it looked similar to
2 me as to the folder. That's all I can say as far as --
3 that was maintained in our file.

4 **Q** So were there other folders with similar
5 handwriting on them?

6 **A** I didn't do that kind of review.

7 **Q** Well, what do you mean that it is similar to
8 other folders?

9 **A** What I meant was, the title -- the words on
10 there were similar to the index -- our closing index,
11 the Judge Carney - Printing Issue. So there was a
12 folder in our file that said Judge Carney - Printing
13 Issue.

14 **Q** And an indication on the inventory that was
15 prepared back in 2014 that corresponds to this label;
16 is that correct?

17 **A** Yes.

18 MR. LINK: Not my handwriting.

19 BY MR. SCAROLA:

20 **Q** And when these documents were turned over to
21 Mr. Link, they were turned over with page 0000183
22 included in what was turned over to him, correct?

23 **A** I don't know. I don't know.

24 **Q** What I thought that you were reviewing were
25 documents that were turned over to Mr. Link.

1 **A** I was reviewing electronic files in my
2 general counsel file that contained those documents.

3 **Q** Turned over to Mr. Link?

4 **A** That were copied.

5 **Q** That were copied for purposes of turning
6 over -- turning them over to Mr. Link?

7 **A** That is my understanding, yes.

8 MR. LINK: Mr. Scarola, you're starting
9 to review them.

10 MR. SCAROLA: Yes, I am.

11 MR. LINK: Let me ask you to pause,
12 please.

13 MR. SCAROLA: I have. How long this
14 time?

15 MR. LINK: I haven't seen them. But my
16 concern is that they have been selected
17 from, obviously, my work product; that they
18 made a copy of -- I was unaware of -- and
19 searched. But I'm still not sure I
20 understand, whatever these documents are,
21 the relevance to the duces tecum and the
22 issue in the contempt proceeding.

23 So if you can -- if you can tie that --
24 you haven't looked at them either --

25 Can you tie that in for us, Mr. Hurley,

1 so that I understand why you think these
2 particular documents -- because all I've
3 heard you say is they have Brad Edwards'
4 name. I have hundreds of emails with Brad
5 Edwards' name on it that have been produced
6 in this case.

7 I have thousands of pages of documents
8 that have been produced in this case with
9 Bates stamp numbers on them.

10 So based on that description, there's
11 nothing about that that says to me these
12 documents might fit within the subpoena
13 duces tecum. If they do, they do. And I
14 don't have a problem with it.

15 But as I sit here, I am at a loss,
16 because your description doesn't tell me
17 anything more than thousands of documents
18 that I have seen in the normal course of
19 this litigation.

20 MR. IANNO: There is no question, so --

21 MR. LINK: I'm just asking why did you
22 pick these versus the thousands that --

23 MR. EDWARDS: He is asking a question.

24 MR. LINK: How do they get to the
25 subpoena duces tecum?

1 MR. IANNO: He answered that. Number
2 six.

3 MR. LINK: Can I see number six,
4 please?

5 MR. IANNO: And my suggestion is, if
6 you guys want to fight over this, we will
7 hold them back and you can go --

8 MR. LINK: I don't think we're
9 fighting. We're trying to understand, at
10 this point.

11 MR. IANNO: Nothing to understand.

12 MR. SCAROLA: Really?

13 MR. IANNO: Yes. He has explained it.

14 MR. SCAROLA: Really?

15 MR. IANNO: Yes.

16 MR. LINK: Mr. Scarola, you remember
17 what number six says?

18 MR. SCAROLA: That's the one I didn't
19 memorize.

20 MR. LINK: Number six says, "Documents
21 sufficient to identify whether, when, and to
22 whom the subject discs, copies of the
23 subject discs or any data derived from the
24 discs were disseminated."

25 And so I'm trying to understand what it

1 is about these documents, Mr. Hurley, that
2 you think is responsive to showing that
3 Fowler White -- that these documents
4 demonstrate something about how Fowler White
5 disseminated the disc.

6 MR. IANNO: And he answered that.

7 MR. LINK: He did?

8 MR. IANNO: Yes.

9 MR. LINK: All I heard was, I saw Brad
10 Edwards' name.

11 MR. IANNO: That's one.

12 MR. LINK: And I saw Bates stamps at
13 the bottom.

14 MR. IANNO: That's two. And the file
15 folder -- and the word -- asked and
16 answered.

17 MR. LINK: The first page, it says,
18 Judge Carney.

19 MR. IANNO: Right.

20 You can ask him if there's anything
21 else other those three, because that's what
22 he's already testified to.

23 MR. LINK: Mr. Scarola, I would suggest
24 this. Why don't we mark it. Why don't you
25 and I look at it together with an agreement

1 that whatever is in there won't be a waiver
2 of my work product or any -- if -- maybe
3 these are attorney-client or work product of
4 Mr. Edwards' that we're fighting about -- I
5 won't use that as an additional waiver
6 argument. So at least we know what we are
7 talking about.

8 MR. SCAROLA: I can't agree to that
9 until I look at them.

10 MR. LINK: But I can't let you look at
11 them without my looking at them because I
12 have my own work product.

13 MR. SCAROLA: I will agree that my
14 looking at them is not a waiver of your work
15 product.

16 MR. LINK: Generous of you, but I think
17 we have to look at them together or give
18 them back and then we can go to Judge Ray
19 and see what Judge Ray says.

20 MR. EDWARDS: But these are all
21 documents that you got, so presumably you
22 have them.

23 MR. SCAROLA: And you still have them.

24 MR. EDWARDS: You still have them.

25

1 MR. SCAROLA: And you have the numbers.

2 MR. LINK: I probably do. But I don't
3 want to have turned them over and have them
4 part of this as a waiver of my work product.

5 MR. SCAROLA: Yes, sir. And that's
6 what I'm agreeing will not be argued. We
7 all have them --

8 MR. LINK: But I wanted to see --

9 MR. SCAROLA: It's not a waiver of your
10 work product.

11 MR. LINK: I got it. But I wanted to
12 see what they are, because, obviously, it's
13 a selection of documents that I made.

14 I don't know what they are. So my
15 offer still stands.

16 MR. EDWARDS: Do we know whether these
17 are documents from the privilege log?

18 MR. LINK: He couldn't know. Nobody
19 has looked at them.

20 MR. EDWARDS: I know. But we have a
21 privilege log that has Bates numbers on
22 here. We have documents that have Bates
23 numbers on them. Has anybody looked at the
24 Bates numbers, not the contents of the
25 documents, but the Bates numbers to match

1 the Bates numbers?

2 MR. IANNO: We have not.

3 THE WITNESS: Joe, let's talk for a
4 second.

5 MR. LINK: I don't think anybody has
6 done anything.

7 The other issue with that, Brad, is --

8 THE VIDEOGRAPHER: Going off the
9 record. The time is 1:50 p.m.

10 (A discussion was held off the record.)

11 THE VIDEOGRAPHER: Going back on the
12 record. The time is 1:51 p.m.

13 MR. SCAROLA: We have just been
14 informed that some of the documents included
15 within the still-unmarked composite labeled
16 "J. Carney-Printing of CD Issue," based upon
17 the Bates stamp numbers, are documents that
18 appear on the Farmer Jaffe/Brad Edwards
19 privilege log, correct?

20 MR. IANNO: He doesn't know that.

21 MR. SCAROLA: You know that, Mr. Ianno.

22 MR. IANNO: No. We know that because
23 -- I don't know that personally, but that's
24 my understanding, is that we checked, and
25 that some of those do.

1 Mr. Hurley, specifically, did not do
2 that to avoid knowing any of the contents of
3 those documents.

4 BY MR. SCAROLA:

5 **Q** Do we have any idea of how hard copies of
6 privilege log documents were contained within the
7 Fowler White files in 2018?

8 **A** No.

9 **Q** Do you agree that they shouldn't have been in
10 there?

11 MR. IANNO: Object to form.

12 THE WITNESS: Without knowing how they
13 came to us, the answer is I'm not sure I can
14 answer that.

15 MR. SCAROLA: Let's you and I talk a
16 moment.

17 THE VIDEOGRAPHER: Going off the
18 record. The time is 1:53 p.m.

19 (A recess was had.)

20 THE VIDEOGRAPHER: Going back on the
21 record. The time is 2 p.m.

22 MR. SCAROLA: The parties have agreed
23 that review of the documents that will be
24 marked as Exhibit D to this deposition will
25 not constitute a waiver of either Mr. Link's

1 work product privilege or any privilege
2 asserted by Brad Edwards or Farmer Jaffe
3 over the documents themselves.

4 We will also agree that this exhibit be
5 sealed and neither we nor you, Mr. Link,
6 will retain a copy of this exhibit. We will
7 review it here. We won't retain a copy.

8 MR. LINK: I agree with that.

9 MR. SCAROLA: You got it.

10 MR. EDWARDS: So we are going to mark
11 that as -- it's a sealed attached --

12 MR. SCAROLA: We are going to mark this
13 as sealed attached exhibit. We have made
14 two copies to facilitate our looking through
15 it, but we are going to turn the copy -- the
16 sealed copy over to the court reporter, and
17 the other copy goes to you to be shredded.

18 And you will be held in contempt if we
19 find that you've retained a copy of the
20 copy.

21 (Exhibit D was marked for identification.)

22 THE VIDEOGRAPHER: Going off the
23 record. The times is 2:02 p.m.

24 (A recess was had.)

25 THE VIDEOGRAPHER: Going back on the

1 record. The time is 2:15 p.m.

2 BY MR. SCAROLA:

3 Q We have had an opportunity to review the
4 contents of Exhibit D, which will be a sealed exhibit
5 to this deposition. And I just want to confirm that
6 Exhibit D is a copy of hard-copied documents that were
7 in Fowler White's file as of the time that that file
8 was inventoried in 2014, as far as you have been able
9 to determine, correct?

10 MR. IANNO: Object to form.

11 THE WITNESS: I have no way of telling
12 that.

13 BY MR. SCAROLA:

14 Q Well, do you have any reason to believe that
15 anything was added to Fowler White's files between the
16 time that it was inventoried in 2014 and the time that
17 it was reviewed by Mr. Link?

18 A I have no way of answering that one way or
19 the other.

20 Q Does Fowler White know of any circumstances
21 that would have resulted in the addition of documents
22 to Fowler White's files subsequent to the time the
23 files were inventoried in 2014?

24 A I'm not aware of any.

25 Q What was the purpose of inventorying the

1 files in 2014?

2 **A** The inventory of files in 2014 was so that we
3 knew which folders were in the file at the time it was
4 being closed. It doesn't describe the contents of the
5 folders.

6 **Q** I understand that. But Fowler White was
7 closing its files because it had concluded its
8 representation of Jeffrey Epstein as of that time,
9 correct?

10 **A** Correct.

11 **Q** So as far as Fowler White knows, since it had
12 concluded its representation of Jeffrey Epstein and was
13 closing its files and inventorying the files for
14 purposes of closing them, there would have been no
15 reason to be adding to those files after they were
16 closed, correct?

17 MR. IANNO: Object to form.

18 THE WITNESS: That would be speculating
19 one way or the other. I don't know. I
20 don't know of any reason why things would be
21 put in. I don't know if we received
22 anything afterwards that would have been put
23 in the file.

24 BY MR. SCAROLA:

25 **Q** What is the closing process? How does that

1 occur?

2 **A** The file clerk prepares an inventory in the
3 database, boxes are assigned; it is sent to archives,
4 sometimes retrieved from archives, then sent back to
5 archives; then left in archives and destroyed after a
6 certain period of time.

7 **Q** What does it mean to be sent to archives?

8 **A** It is sent to an off-site facility, which
9 specializes in the storage of files.

10 **Q** When requests are made to retrieve files from
11 the archives, are those requests documented?

12 **A** Yes.

13 **Q** Did you see any request to retrieve this file
14 from archives at any time between 2014 when it was
15 initially archived and 2018 when the file was provided
16 to Mr. Link for his review?

17 **A** It actually went to archives in early 2015, I
18 believe. And I requested the file back in November of
19 2017.

20 **Q** Okay. Was there any other requests to remove
21 the file from inventory -- from archive between those
22 dates?

23 **A** No.

24 **Q** The file that is printed as part of Exhibit D
25 or Exhibit D, which is a copy of the file labeled "J.

1 Carney Printing of CD Issue," that file is on the 2014
2 inventory, right?

3 **A** There's a lot in that question, again.

4 The file folder -- the name of the file
5 folder appears on the inventory. It doesn't reflect
6 the contents of the folder. It doesn't necessarily
7 mean that everything as is presented for copying was
8 as it was contained at the time the file was sent to
9 archives.

10 **Q** So somebody could have snuck into wherever
11 these files are archived, inserted new documents in the
12 file without ever requesting the file from archives, so
13 that new documents would have been in that file,
14 inserted sometime between 2014 and 2017?

15 **A** And that's not at all what I said.

16 **Q** Pardon me?

17 **A** That's not what I said.

18 **Q** Well, can you think of any other explanation
19 as to how new documents would get into that file
20 between the time it was inventoried in 2014 and the
21 time you requested it from archives in 2017?

22 **A** I don't believe that documents were put in
23 the file during the time of the archives. I don't know
24 if anything was added to the file before going to
25 archives. I don't know if anything was added to the

1 file coming back.

2 I'm not trying to say it was done
3 surreptitiously in any way. But there are times --
4 it would not be reflected in the index or inventory
5 if anything as added to the file.

6 Q How does something get added to file after it
7 has been inventoried and archived, unless it's pulled
8 out of the archive to put something new in?

9 MR. IANNO: Object to form.

10 THE WITNESS: And I just said it would
11 not have been done when it was archived.

12 BY MR. SCAROLA:

13 Q So are you saying that maybe sometime between
14 the time it was inventoried and got sent to archive
15 that something could have been put in there?

16 MR. IANNO: Object to form. That's not
17 what he's saying.

18 MR. SCAROLA: That's what I'm trying to
19 find out. I'm sure he's capable of telling
20 us.

21 THE WITNESS: First of all, I'm not
22 saying that what you have mark as Exhibit D
23 was all contained together in the file as it
24 was inventoried and sent to archives. It
25 may have been in the file and other parts.

1 I don't know. I don't know if it was added
2 before it was sent to archives. I don't
3 know if it was added after it came from
4 archives.

5 I have no indication it was added any
6 time after archives. But I don't know when
7 those documents were put into the file, nor
8 can I tell you where for sure they were
9 maintained in the file once they were in the
10 file.

11 BY MR. SCAROLA:

12 Q Mr. Hurley, let me be entirely clear with you
13 as to what I'm trying to figure out. We have looked at
14 Exhibit D. Exhibit D contains one or more documents
15 that were included on the privilege log, documents that
16 have been on the privilege log since the time the
17 privilege log was prepared, and documents that were
18 never voluntarily turned over to anyone.

19 We're trying to figure out how a hard copy
20 of a privileged document could have been included in
21 Fowler White's files when Fowler White gave access
22 to those files to Mr. Link.

23 MR. IANNO: Object to the form.

24 BY MR. SCAROLA:

25 Q Can you offer us any explanation as to that?

1 MR. IANNO: You can ask him if he knows
2 and I don't have any objection to that
3 question of how the documents got in there.
4 But I want to absolutely my clear you're
5 asking him to speculate.

6 MR. SCAROLA: No. I'm asking him to
7 offer us any explanation he can as to how
8 Fowler White winds up in possession of a
9 hard copy of a privileged document that it
10 was not supposed to have.

11 MR. IANNO: Then you're asking him to
12 speculate. You can ask him if he knows.
13 And then if you want to follow up, that's
14 fine. But other than that, it calls for
15 speculation.

16 BY MR. SCAROLA:

17 **Q** Yeah. That's my question. Do you know how a
18 hard copy of a privileged document could have wound up
19 in Fowler White's files when those files were turned
20 over to Mr. Link for inspection?

21 **A** I do not.

22 RE CROSS-EXAMINATION

23 BY MR. EDWARDS:

24 **Q** Do you know when the hard copies that are
25 Composite Exhibit D -- do you have any idea when those

1 documents came into possession of Fowler White?

2 **A** I do not.

3 **Q** The cover that says, "J. Carney Printing of
4 CD Issue," that's the verbiage that was on the
5 inventory that you're speaking about?

6 **A** That is similar to the verbiage on the
7 inventory, which was the title of the file folder.

8 **Q** When you say it's similar to it, is it
9 identical to?

10 **A** I think it's identical.

11 **Q** Do you believe that what we have as the first
12 page -- which is Bates numbered 183 in this Composite
13 Exhibit D -- is a copy of what is on the file folder
14 that was inventoried in 2014?

15 **A** I do.

16 **Q** Why do you believe that?

17 **A** Because I think our servers made a copy of
18 the folder with the writing on it to identify it.

19 **Q** Do you believe that within that folder back
20 in 2014 was this compilation of documents in the order
21 this compilation of documents is presented today back
22 in 2014?

23 **MR. IANNO:** Object to form. You're
24 asking him to speculate. If you're asking,
25 as Mr. Scarola did, Do you know, I don't

1 CERTIFICATE OF OATH

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

5 I, the undersigned authority, certify that
6 JAMES N. HURLEY, ESQUIRE personally appeared before me
7 and was duly sworn.

8 WITNESS my hand and official seal this 22nd
9 day of October, 2018.

10
11 _____
12 Sonja D. Hall

13 Commission No.: GG 168652

14 Notary Public - State of Florida

15 My Commission Expires: 2-01-22
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1 REPORTER'S DEPOSITION CERTIFICATE

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

6 I, SONJA D. HALL, certify that I was
7 authorized to and did stenographically report the
8 deposition of JAMES N. HURLEY, ESQUIRE; that a review
9 of the transcript was requested; and that the
10 transcript is a true and complete record of my
11 stenographic notes.

12 I further certify that on the 22nd day of
13 October, 2018, I notified JOSEPH IANNO, ESQUIRE that
14 the deposition of JAMES N. HURLEY, ESQUIRE was ready
15 for reading and signing by the witness.

16 I further certify that I am not a relative,
17 employee, attorney, or counsel of any of the parties,
18 nor am I a relative or employee of any of the parties'
19 attorney or counsel connected with the action, nor am
20 I financially interested in the action.

21 Dated this 22nd day of October, 2018.

22 _____
23 SONJA D. HALL
24
25

1 TO: JAMES N. HURLEY, ESQUIRE
2 c/o JOSEPH IANNO, ESQUIRE
3 CARLTON FIELDS, PA
4 525 Okeechobee Boulevard, Suite 1200
5 West Palm Beach, FL 33401

6 RE: ROTHSTEIN ROSENFELDT ADLER, P.A.

7 At the conclusion of your deposition given
8 in the above-styled cause you indicated you wished to
9 read and sign the transcript.

10 This letter is to advise you that your
11 deposition is ready, and we ask that you call our
12 office at (561) 471-2995 at your earliest convenience
13 for an appointment to come in.

14 If you are a party in this action and your
15 attorney has ordered a copy of this transcript, you
16 may wish to read his copy and forward to us a
17 photostatic copy of your signed correction sheet.

18 It is necessary that you do this as soon as
19 possible, since the transcript cannot be held beyond
20 two weeks from the date of this letter.

21 If you have any reason which you would like
22 for me to place on your deposition as to your failure
23 to sign the same, please advise.

24 Thank you for your prompt attention.

25 Very truly yours,
PALM BEACH REPORTING SERVICE, INC.
1665 Palm Beach Lakes Blvd.,
Suite 1001
West Palm Beach, Florida 33401

BY: SONJA D. HALL

Date: October 22nd, 2018

1 CORRECTION SHEET:

2 NAME: JAMES N. HURLEY, ESQUIRE

3 RE: ROTHSTEIN ROSENFELDT ADLER, P.A.

4
5 The following corrections, additions or
6 deletions were noted on the transcript of the
7 testimony which I gave in the above-captioned matter
8 held on October 19th, 2018:

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23 PAGE(S) LINE(S) SHOULD READ
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SIGNATURE: _____

DATE: _____