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IN THE CIRCUIT COURT, 15TH
JUDICIAL CIRCUIT, IN AND FOR
PALM BEACH COUNTY, FLORIDA

CASE NO.: 50 2009 CA 040800XXXXMBAG

JEFFREY EPSTEIN,

Plaintiff,

vs.

SCOTT ROTHSTEIN, individually,
BRADLEY J. EDWARDS, individually,
And L.M., individually,

Defendants.

* * * * *

HEARING BEFORE: HONORABLE DAVID F. CROW
DATE TAKEN: July 13, 2011
TIME: 10:34 a.m. to 4:45 p.m.
PLACE: Palm Beach County Courthouse
205 N. Dixie Highway, Room 9C
West Palm Beach, Florida 33401
REPORTED BY: Kathleen M. Ames, RPR

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24

25

1 MR. SCAROLA: Good morning, Your Honor.

2 MR. KNIGHT: Good morning, Your Honor.

3 THE COURT: Okay. We're here on Epstein versus
4 Rothstein, et al. I want to thank the party that sent me
5 the whole list of motions and I appreciate it very much.
6 And I did have a chance to go through most of the stuff
7 and, quite frankly, it's kind of hard to get my arms around
8 this. There is a lot to do. My thoughts is to first kind
9 of set-up a schedule to determine where we should go today
10 in terms of starting in one place and where we're going to
11 go. And seems to me the first place to start is try to get
12 the pleadings in order, in terms of the motions that are
13 pending that have not been ruled on. Then I would like to
14 find out, I mean, I read the, at least, the interim report
15 from Judge Carney. Is it Judge Carney? And I want to find
16 out what the status of all of that is. And then I guess
17 the best way to proceed, unless somebody has a better
18 alternative, is to start with the motions in some type of
19 chronological order. But before that, to kind of get an
20 opening from both sides as to where they feel or why they
21 feel these various issues should be decided in their favor.
22 I know they are varied but just to give me some general
23 background in terms of the case.

24 Having said that then, unless somebody has a better
25 alternative, I would like to start with there is a pending

1 motion to dismiss on the, I guess, it's the second amended
2 complaint.

3 MR. ACKERMAN: It's the amended complaint, be the
4 second complaint.

5 THE COURT: Which I've read in detail the motion.
6 Also, I think, pending is still the motion for punitive
7 damages in regard to the counterclaim and I don't think
8 there is any other motions pending in regard to the
9 pleadings, are there?

10 MR. SCAROLA: There are not, sir, no.

11 THE COURT: Okay. I mean, I think I'm here to
12 talk about all of those so why don't we start with the
13 motion to dismiss because that kind of gets the thing
14 rolling so start there. It's your motion, Mr. Scarola.

15 MR. SCAROLA: Thank you, Your Honor. With the
16 Court's permission, may I address the Court from a seated
17 position today?

18 THE COURT: Yes, I prefer you do that.

19 MR. SCAROLA: Thank you. Your Honor, this case
20 started out with a thirty page, seventy-nine paragraph,
21 five count complaint that read more like a press release
22 than a legal pleading. And was the source of substantial
23 procedural difficulty, as a consequence of the imprecision
24 with which an effort was made to embroil Bradley Edwards in
25 the Rothstein Ponzi scheme. We have moved from that

1 massive effuse press release to what is now a nine page,
2 single count abuse of process case. The state civil remedy
3 for criminal practices count gone. The state RICCO claim
4 gone. The fraud claim gone. The conspiracy claim gone.
5 And a whole new abusive process claim has now been asserted
6 very different from what we were looking at previously.
7 Indeed, the only allegation that attempts to associate
8 Bradley Edwards with anything having to do with Rothstein
9 is a claim that appears in Paragraph 20, which says,
10 essentially, because so many RRA personnel, Rothstein,
11 Rosenfeldt, Adler personnel, were involved in the
12 prosecutions of what were, obviously, very meritorious
13 claims on behalf of the child victims of Mr. Epstein's
14 criminal molestations, because so many RRA personnel were
15 involved in the prosecution Edward, quote, "knew or
16 reasonably should have known that his, Epstein's case
17 files, were being shown and touted to investors."

18 Now, no allegation that he knew or reasonably should
19 have known that they were part of a Ponzi scheme but on the
20 non sequitur assertion that because there were a lot of
21 people involved in these very important, very big cases.
22 Mr. Edwards knew or reasonably should have known that
23 someone was trying to attract investors to fund the
24 prosecution of these claims.

25 The first element of a motion to dismiss relating to that

1 allegation is so what. A law firm has every right to raise
2 funds to prosecute legitimate claims on behalf of its
3 clients. And if all Bradley Edwards knew, which he didn't,
4 but we must take the allegations of the complaint as true,
5 if all he knew was, because there were a lot of people
6 involved in the prosecution of these claims, he must have
7 known that his files were being shown to and touted to
8 investors, that, certainly, can't form the basis of any
9 cause of action.

10 Let's take a look at what this complaint says Bradley
11 Edwards did that constituted abuse of process.

12 THE COURT: Let me just say off the top here that
13 I have one problem with the complaint because it lumps
14 defendants together in numerous allegations without
15 differentiating as to any of the defendants which one did
16 what, if any, or all did.

17 MR. SCAROLA: Your Honor has anticipated one of
18 the points that I would make and that, clearly, is one.
19 But even assuming that all the defendants did all of the
20 things that are claimed to have been done by the
21 defendants, plural, let's take a look at what they say
22 Bradley Edwards did. In the introductory paragraph they
23 say that he is liable for abuse of process because of four
24 things. One, he engaged in unreasonable and vexatious
25 discovery within the context of claims that are never

1 asserted to have been anything other than legitimate
2 claims. So one is unreasonable and vexatious discovery in
3 the introductory paragraph not specified in any way.

4 The second is making unfounded allegations in his
5 lawsuits on behalf of his clients who had legitimate
6 claims.

7 The third is using improper investigative tools.

8 And the fourth, interfering with a non-prosecution
9 agreement.

10 Now, of those four generally described elements of
11 wrongful conduct, the only category that could possibly
12 involve process, which means the filing of a complaint, the
13 filing of an answer to a complaint, the filing of some
14 pleading or a subpoena. The only category that could
15 encompass abuse of process arguably could be engaging in
16 unreasonable and vexatious discovery. And we're going to
17 look at what they claim the unreasonable and vexatious
18 discovery was in just a moment.

19 We know from Paragraph 17 that the claims were not
20 initiated while Mr. Edwards was an employee of RRA.
21 Paragraph 17 tells us that he brought these legitimate
22 cases, settled for very large sums of money voluntarily by
23 the plaintiff. He brought those claims with him to the law
24 firm. So it's not the filing of the claims themselves
25 that's anywhere alleged to have been an abuse of process.

1 They don't make that claim.

2 Paragraph 27 says the defendants embarked a scheme to
3 interfere with the non-prosecution agreement, quote, "for
4 the purpose of upping the stakes of the litigation." Now,
5 the non-prosecution agreement is the agreement that
6 Mr. Epstein entered into with the federal government that
7 allowed him, what we and our clients, or Mr. Edwards'
8 clients contend, was an improper and sweetheart deal. But
9 attempting to challenge unsuccessfully, at least thus far
10 unsuccessfully, a non-prosecution agreement on the basis
11 that the victims had a right under federal law to be
12 consulted regarding that agreement, which right was never
13 afforded to them. Attempting to challenge a
14 non-prosecution agreement could not possibly be abuse of
15 process.

16 And to the extent that there might be some assertion
17 that this was tortious interference in an advantageous
18 business relationship, the law is very clear, and I'm
19 prepared to cite the cases to Your Honor, if it's
20 necessary. I don't know that this is going to be
21 challenged. That unsuccessful interference is not
22 actionable interference. A case calling Scheller versus
23 American Medical International. So the allegations about
24 the non-prosecution agreement, I suggest, are an absolute
25 nullity. They can't constitute an abuse of process.

1 Let's go on to Paragraph 29, because that's where
2 presumably an effort is made to set out what the
3 unreasonable and vexatious discovery is. Paragraph 29,
4 Sub-paragraph One talks about asking three airplane pilots
5 inflammatory questions during the course of the depositions
6 of those airplane pilots. Asking questions is not an abuse
7 of process. Asking airplane pilot questions cannot
8 possibly have a causal connection to the damage that is
9 alleged by Mr. Epstein in this case.

10 Curiously the damages have also changed dramatically.
11 We are now told that the damages constitute fees and costs
12 incurred in the underlying litigation, any claim for which
13 was released in the underlying litigation. We will ask the
14 Court to take judicial notice of the orders of dismissal of
15 the three underlying claims, which require the parties to
16 those cases to bear their own attorney's fees and costs.
17 Mr. Epstein, having stipulated as part of the settlement
18 that he was going to bear his own fees and costs, cannot
19 claim as damages, in this case, fees and costs incurred in
20 the underlying litigation, if they could possibly form the
21 basis of any claim of liability in light of the broad
22 litigation privilege that exists in the state of Florida.

23 Let me address that very briefly. If I may approach
24 the bench, I want to provide the Court with a copy of the
25 Florida Supreme Court decision in Echevarria,

1 E-C-H-E-V-A-R-R-I-A, vs. Echevarria. That is the most
2 recent Florida Supreme Court decision addressing the
3 litigation privilege. It contains an excellent discussion
4 of the Court's view of the scope of that privilege. And
5 upon review of that case Your Honor will find that the
6 Supreme Court has clearly and unequivocally held that
7 conduct that occurs in the course of litigation is covered
8 by the absolute litigation privilege. The Court finds, as
9 a matter of public policy, that it would be inappropriate
10 to allow the assertion of independant claims for conduct
11 that occurs within the course and scope of litigation.
12 That there are other available remedies, including ethics
13 complaints against lawyers involved in such conduct,
14 including contempt proceedings and the imposition of
15 sanctions, which appropriately can control that conduct.
16 And allowing the assertion of claims in independant actions
17 for conduct that occurs in the course and scope of
18 litigation would have an inappropriate and improper
19 chilling effect.

20 So in light of that broad privilege, anything and
21 everything that is asserted to have occurred in the context
22 of the underlying claims, such as asking three airplane
23 pilots inflammatory questions, first of all, does not
24 involve an abuse of process. And, secondly, is privileged
25 conduct.

1 Next paragraph, Sub-paragraph Two of Paragraph 29.
2 Notifying Epstein of an intent to depose his high-profile
3 friends.

4 THE COURT: Let me just ask you, I've not read,
5 quite frankly, the Echevarria case but does it still stand
6 for the proposition that for there to be a litigation
7 privilege it must be related to the legal proceeding
8 itself?

9 MR. SCAROLA: Yes, sir.

10 THE COURT: It can't be something like -- okay.

11 MR. SCAROLA: If I were to issue a subpoena to
12 Mr. Edwards for the sole purpose of causing him to miss an
13 important business appointment where he was going to make a
14 lot of money and I'm requiring him to be in Court with no
15 legitimate connection whatsoever to the litigation that's
16 involved, that could constitute an abuse of process. One
17 of the elements clearly is that it must be related to the
18 litigation. But any conduct that occurs in relation to the
19 litigation is conduct that is protected by an absolute
20 privilege.

21 There is a discussion of the Levin, Middlebrooks case
22 where the Supreme Court makes clear that we're not just
23 talking about statements made in the context of litigation
24 but all tortious conduct that may be alleged. So it's a
25 very broad privilege. It covers exactly the kind of

1 conduct that is alleged to have occurred here in Paragraph
2 One, which isn't conduct involving process in any case.

3 Paragraph 29, Two, notifying Epstein of an intent to
4 depose his high-profile friends. Telling somebody I'm
5 going to depose your friends isn't process. Issuing a
6 subpoena is process. Serving the subpoena is process.
7 Notifying somebody that you're going to depose his friends,
8 that's not process.

9 Asking Epstein outrageous questions in his deposition,
10 Sub-paragraph number Three, that's not process.
11 Sub-paragraph Four, requesting records from the federal
12 government regarding communications between the government
13 and Epstein lawyers. This is where the tortious
14 interference with the non-prosecution agreement is alleged
15 to have occurred because requests are made to find out
16 about communications between Epstein and the federal
17 government with regard to the very criminal activity that
18 forms the basis of the civil lawsuits that Mr. Edwards is
19 legitimately prosecuting on behalf of the child victims of
20 Mr. Epstein's criminal activity, clearly, could not
21 constitute abuse of process.

22 Paragraph Five, quite frankly, I just don't
23 understand.

24 Paragraph 29, Five, reads the representative of the
25 trustee for RRA's bankruptcy stated that there are

1 thousands of documents involving RRA's employees and
2 government officials, including state and federal law
3 enforcement authorities relating to Epstein. What does
4 that mean in the context of this abuse of conduct claim
5 against Bradley Edwards? It just doesn't make any sense.
6 I can't respond to it because I clearly don't understand
7 it.

8 Six is requesting records from Dr. Bard who it is
9 claimed didn't treat Mr. Epstein. Well, okay, so what. I
10 guess one way to find out whether he treated Mr. Epstein is
11 to subpoena any records that he has about Mr. Epstein.
12 Subpoenaing records from a physician is not an abuse of
13 process outside the scope of the litigation privilege.

14 Paragraph Seven, filing a second amended complaint
15 alleging Epstein forced L.M. to engage in oral sex. Part
16 of the litigation privilege clearly.

17 Attempting to depose celebrity airplane passengers.
18 Clearly, within the course and scope of the litigation
19 privilege in the absence of any allegation that this was
20 entirely unrelated to the prosecution of the claims against
21 Mr. Epstein, which allegation appears nowhere. No such
22 allegation appears anywhere.

23 Nine, directing third-party subpoenas be used to
24 obtain Epstein's prescriptions from pharmacies.
25 Now, it doesn't say that the third-party subpoenas are ever

1 issued but if we can infer that they were, this is conduct
2 that clearly falls within the scope of the litigation
3 privilege.

4 Paragraph 30 says that the defendants trespassed on
5 Epstein's property and conducted surveillance of him. Now,
6 without getting into the truthfulness of those allegations
7 which must be taken as true, if the defendants trespassed
8 on Mr. Epstein's property, then there may be a cause of
9 action for trespass. There is no cause of action for abuse
10 of process because somebody trespasses on your property.
11 There is no cause of action for abuse of process because
12 somebody decides that they are going to surveil you.

13 Paragraph 31 says that Mr. Edwards tried to plead a
14 RICCO claim. So what.

15 And Paragraph 32 says that he tried to freeze
16 Mr. Epstein's assets. So what. That does not constitute
17 abuse of process and to the extent it might be
18 characterized as a use of process in the context of the
19 litigation on behalf of his child victims of Mr. Epstein's
20 repeated extensive criminal activity, it is covered by the
21 litigation privilege.

22 There are three elements of damage that are alleged.
23 Fees and costs in the underlying litigation, which cannot
24 constitute damages in this case. And the installation of
25 an enhanced security system, which presumably may have some

1 causal connection to the trespass on Epstein's property and
2 the conducted surveillance of him, but, certainly, has
3 nothing to do with any abuse of process. And the retention
4 of security personnel for Mr. Epstein's personal safety and
5 to protect his property. Now, there is no possible causal
6 connection between the alleged and privileged litigation
7 misconduct and Mr. Epstein's desire for privacy.

8 Another significant problem that this complaint faces
9 is that Mr. Epstein seeks to assert these claims by way of
10 an amended complaint when he has repeatedly and
11 persistently refused to provide any relevant or material
12 discovery as a consequence of the assertion of his Fifth
13 Amendment privilege. We have previously cited to Your
14 Honor a number of cases, a substantial body of case law
15 relating to the sword/shield doctrine. Mr. Epstein is
16 seeking affirmative relief. I don't challenge the validity
17 of his assertion of Fifth Amendment privilege. There is no
18 doubt in my mind that he faces the potential of additional
19 criminal prosecution. There are new claims that
20 Mr. Edwards himself has placed the defendants on notice
21 that he is about to file so there is no doubt about the
22 fact that Mr. Epstein faces additional potential criminal
23 liability and has a right to assert his Fifth Amendment
24 privilege against self-incrimination. But the case law is
25 absolutely clear he cannot come to this Court, sue Bradley

1 Edwards and continue to assert his Fifth Amendment right as
2 to matters that are relevant and material to the claims
3 that he is attempting to prosecute. For, for all of those
4 reasons, and if the applicability of the sword/shield
5 doctrine is in any way challenged, I'll address that in my
6 response. I don't know how it can be. But for all of
7 those reasons this is a complaint, an amended complaint
8 which can, should and finally must be released. It must be
9 dismissed. Thank you, Your Honor.

10 THE COURT: Just one second. Let me read
11 something here.

12 MR. SCAROLA: The motion to dismiss reaches those
13 arguments through the incorporation of all of the arguments
14 in the summary judgment.

15 THE COURT: You must be some kind of psychic.

16 MR. SCAROLA: I anticipated that is where the
17 Court was going. The motion to dismiss, Your Honor,
18 expressly incorporates the arguments that were made during
19 the summary judgment hearing. And, clearly, one of the
20 principal arguments that was made in the summary judgment
21 hearing was an argument with regard to the sword/shield
22 doctrine. I apologize for having intruded upon your
23 thoughts.

24 THE COURT: Go ahead.

25 MR. KNIGHT: Your Honor, Christopher Knight on

1 behalf of Jeffrey Epstein. And let me back you up as to
2 where we are and why we are. When we came into this
3 lawsuit there was the original complaint, which Mr. Scarola
4 talked about and Your Honor was allowing us to move forward
5 with discovery before we amended the complaint, which from
6 day one we said we will be amending the complaint to plead
7 the cause of action that we felt was appropriate. We tried
8 to go down that angle but plaintiffs -- I mean, excuse me,
9 the defendants asserted privilege to pretty much each and
10 every document which we will ever be able to get our hands
11 on. We did get some limited privilege logs, which will
12 come up in part of my argument, which is talks about why
13 the frivolity of this motion to dismiss. If they want to
14 move for a motion for summary judgment on down the line if
15 they have the facts after we get the document, that's a
16 horse of a different color.

17 But you asked us to -- first, let's take the
18 discovery. Unfortunately between Mr. Rothstein not being
19 able to be deposed, which we, of course, need to talk to
20 Mr. Rothstein about what Mr. Edwards' involvement was, and
21 their blanket assertion of privilege --

22 THE COURT: Let me back up. I don't -- I
23 directed you to do discovery. I think I questioned why
24 there was never a motion to dismiss to the original
25 complaint and I said but this is the complaint we have to

1 deal with. And I can't tell from reading this thing what
2 in the world the cause of action is and it created a lot of
3 problems in terms of what the scope of discovery was.
4 Without knowing what you are suing for it's very difficult
5 to figure out the scope of discovery and that's why I
6 directed Mr. Ackerman to file an amended complaint so we
7 would be able to focus in on what is discoverable, what
8 isn't, what the cause of action is and that sort of thing.

9 MR. KNIGHT: Correct. And then we went forward
10 with what we had to date, which is a reasonable basis for
11 abuse of process claim which has been made. The complaint
12 on its four corners meets all the standards which are
13 required. And these are the cases that are already cited
14 in our briefing and the response, is the Donna Della case,
15 which is the 4th DCA case out of 1987, and goes through the
16 various factors, which leads to what I must give you, which
17 is a little bit of background so that you have it.

18 Mr. Epstein came over to the Rothstein firm with three
19 cases. Excuse me. Mr. Edwards. Mr. Edwards came over to
20 the Rothstein firm with three of these files. After he got
21 to the Rothstein firm Mr. Rothstein, Mr. Edwards, and
22 others used the cases to pump up the Ponzi scheme. The
23 documents that we need and the privilege logs --

24 MR. SCAROLA: Excuse me, Your Honor, I'm sorry.

25 THE COURT: That's not even alleged.

1 MR. SCAROLA: It is not alleged. And I cannot
2 allow counsel to make those kinds of statements in open
3 court in the presence of the press and leave them
4 unchallenged. That's exactly what has repeatedly gone on
5 in this case to besmirch Mr. Edwards' reputation.

6 THE COURT: Let me stop you. What I'm concerned
7 about with this complaint, okay, and what concerns me is
8 that there are allegations that the defendants did this,
9 the defendants did this without specifying who did what to
10 whom and why. It seems to me if you are going to sue
11 Mr. Edwards or anyone else, for that matter, you need to be
12 specific as to what he did or what you accuse him of before
13 I -- I dismiss routinely complaints like this, which
14 generically say the defendant did something without
15 specifying who did what to whom and why. Because it does
16 not spell out what your claims are I don't know what
17 Mr. Rothstein did. What Mr. Edwards did. Or -- and you
18 also say and others. Who? I don't know who they are.

19 And the other problem I have with it, aside from, I
20 think there are some other issues, but your prayer for
21 damages is specific as to some things but also has that,
22 that, that, phrase that, that we all, you know, perk up our
23 ears on, including but not limited to, which leads me to
24 believe there is something else there that you're claiming
25 in terms of damages, which is not, in fact, spelled out in

1 the complaint. And if there are, in fact, special damages,
2 I think they have to be pled, as compared to general
3 damages. So I don't know whether you're asking for and it
4 makes a big difference, ultimately, what, what -- if we get
5 to the point of the discovery issue -- what the defendants
6 can get from the plaintiff and vice-versa. I mean, if
7 you're claiming damage to reputation, lost profit, I don't
8 know what it is you're claiming. I don't know what
9 including but not limited to means, quite frankly.

10 MR. KNIGHT: Your Honor, let me break these down.

11 THE COURT: Okay.

12 MR. KNIGHT: You brought up the subject early on
13 about lumping the defendants together and there was an
14 early paragraph which did so. The Paragraph 29, which Mr.
15 Scarola went through, is going through allegations relative
16 to Mr. Edwards and if it needs to be divided out relative
17 to Rothstein and Edwards, we will do so as it relates to
18 damages. The law under abusive process is even nominal
19 damages are enough to survive for a cause of --

20 THE COURT: Don't misunderstand, Counsel, I don't
21 disagree with that proposition that you allege damages that
22 you claim are a result of this. What I'm concerned about
23 is you have thrown in the kitchen sink in that, which is
24 included not limited, does that mean you're claiming other
25 damages or not claiming other damages? I don't know what

1 that means.

2 MR. KNIGHT: At this time we're claiming the
3 three areas of specified damages which we went into but the
4 reason that catch-all is in there it goes back to this
5 whole issue relative to the documents that we have been
6 unable to receive. We believe that there will be other
7 damages that maybe would be asserted at that time. If Your
8 Honor is saying what he would rather have us do is once we
9 get the documents, amend again, I fully understand. We can
10 do so. But at the same time we don't want to be precluded
11 from being able to move forward with our cause of action.

12 The abuse of process cause of action is spelled out in
13 all four corners under the Della Donna decision and, also,
14 the SCI Funeral comments relevant to it, which have been
15 provided in the earlier briefings. Here at the motion to
16 dismiss stage that is where we, that's what the Court needs
17 to look at, as we have discussed. The areas relative to
18 litigation privilege, which Mr. Scarola went at length
19 into, deals with tortious interference causes of action and
20 do not deal with abuse of process. It would be nonsensical
21 for abuse of process to have a privilege because,
22 therefore, you will never be able to bring a cause of
23 action for abuse of process.

24 THE COURT: Let me disagree with you. I think
25 that the litigation privilege would go to any process

1 served in the litigation that's relevant to the litigation.
2 It doesn't give you the right to go out and subpoena the
3 president of the United States in a case just to get, for
4 some reason, unrelated to the purposes of the litigation.
5 So, I mean, there is, I read these cases. Unless this has
6 changed the law. At least, it allows abuse of process in
7 civil litigation if, in fact, the processes are not for a
8 legitimate purpose.

9 MR. KNIGHT: If the unrelated areas are --

10 THE COURT: His point was how can these be
11 illegitimate, I think is what his point was.

12 MR. KNIGHT: If that's his point but what I was
13 taking he was using the cases of tortious interference.

14 THE COURT: I don't think it matters what
15 tort it is. I think the litigation privilege applies
16 whether it's libel, slander, tortious interference, you
17 know, abuse of process, malicious prosecution, all of those
18 there is a litigation privilege associated with that. And
19 it's a natural privilege. That's how I understand the law.
20 I may be misquoting it but that's what I understood the law
21 is.

22 MR. KNIGHT: Understood. And the allegations
23 which are in Paragraph 29 go into some of those areas which
24 are outside, including Mr. Edwards' own deposition. I
25 mean, in his lawsuit, his clients were never on these

1 airplanes yet they went forward and took the depositions of
2 these pilots, et cetera, on the airplane causing excess
3 fees. And really what this was being used for is to be
4 able to gain information which could be used in the
5 underlying promotion in the Rothstein cases. And that's
6 why I brought it up earlier when I was interrupted by Mr.
7 Scarola. It is relevant to what we're talking about today.
8 This is a matter where Mr. Edwards' deposition said I had
9 very little contact with Mr. Rothstein. But at the same
10 time we learn once we get to the privilege log and also the
11 only time he dealt with Mr. Jenny was when Mr. Jenny, who
12 is the investigator approached him, that they are claiming
13 privilege related to, we counted it up, dealing with
14 eighteen to twenty attorneys, nine paralegals, plus
15 investigators.

16 MR. SCAROLA: Excuse me, Your Honor, I thought
17 we were arguing the motion to dismiss and not the privilege
18 issue.

19 MR. ACKERMAN: I am. But Your Honor's specific
20 question -- I would ask Mr. Scarola to hold his
21 arguments -- but Your Honor's specific question dealt with
22 what are these areas which are outside of the tort or
23 whatever is being sued on. And if those are being done for
24 some purpose other than the underlying litigation, which
25 were the L.M. and the Jane Doe and E.M. cases here, then

1 that is abuse of process. This is at the point of
2 allegations without us being able to get discovery. The
3 allegations we have put into Paragraph 29 in specificity,
4 especially, when you get into Paragraph Four under, under
5 29, which deals with Mr. Edwards going to the Court
6 relative to what should be something relating to the three
7 lawsuits that he has, when what it really is undermine the
8 non-prosecution agreement. Why is that relevant to abuse
9 of process? Well, all that is being used for is to find a
10 way to ramp up our client relative to other worries, which
11 are unrelated to the prosecution of those individual victim
12 cases so that he ends up having to be in a situation where
13 he has to pay exorbitant dollars, which otherwise would
14 multiply what the amount of the actual value of those
15 underlying cases otherwise would be. The complaint itself
16 goes through all that is required under Della Donna.

17 THE COURT: I presume in those underlying cases
18 there were claims of punitive damages; is that correct.

19 MR. KNIGHT: There are claims of punitive
20 damages, correct.

21 THE COURT: Okay.

22 MR. KNIGHT: By the same thing, even looking into
23 that, the efforts to freeze assets, things like that.
24 There was no indication at any point that Mr. Epstein would
25 be unable to cover whatever the compensatory damages and,

1 if punitive damages were ever to be allowed, any type of
2 punitive award. All of this was done to ramp up these
3 cases outside of these three, which were the ones that
4 Mr. Rothstein, and as we get through discovery, we believe
5 Mr. Edwards were using to sell to the various investors to
6 ramp up the Ponzi scheme. They are tied together. They
7 are in the same firm. These are the lawsuits that were
8 used when the various investors came into the office with
9 Mr. Rothstein. Mr. Edwards is claiming, I believe, that I
10 had no idea that this was going on with my lawsuits.
11 Although, we know in the privilege log they're claiming
12 that he's dealing with the eighteen to twenty attorneys,
13 the nine paralegals and the investigators. They just don't
14 add up both ways.

15 But relative to what we're here on today, the motion
16 to dismiss, this amended complaint does plead a cause of
17 action under Florida law. If Your Honor wants us to go
18 back and plead with more specificity relative to where we
19 put in defendants, we will do so. I would suggest it would
20 be better for us to be able to get the discovery. And the
21 reason we have so many people here is we have
22 Mr. Weinberg here to represent -- to talk about privilege
23 issues. Mr. Ackerman to talk about various issues that may
24 come up, including sword and shield. Get to those so that
25 we don't constantly have to be coming back to the Court.

1 This complaint does plead a cause of action under Florida
2 law and the motion to dismiss should be denied. Thank you.

3 THE COURT: Speak to the fact that some of these
4 things I, I mean, I understand how, even though they ask
5 you, the question in and of itself may not be abuse of
6 process. The actual subpoenaing somebody and then asking
7 of the questions may be abuse of process, at least, in my
8 view. If, in fact, the only purpose of doing that is to,
9 like you have alleged here, to somehow or another for
10 illegal purposes or for improper purposes. But there are
11 some of these things that you've alleged here I don't know
12 how ever could be abuse of process. Like notifying
13 somebody that they intend to do something, how could that
14 possibly be abuse of process? Or saying -- or how can
15 investigation be an abuse of process, or surveillance be an
16 abuse of process. That's not using the process of the
17 Court for anything. Maybe I'm missing something.

18 Or what does this mean, the representative of the
19 trustee for RRA's bankruptcy stated there are thousands of
20 documents involving RRA employees and government officials
21 including state and federal law enforcement authorities
22 relating to Epstein. What does that have to do with abuse
23 of process?

24 MR. KNIGHT: That one --

25 THE COURT: Let me finish and then you can

1 respond.

2 MR. KNIGHT: Yes, sir.

3 THE COURT: Why is making an allegation in a --
4 well, I guess that could -- I can see that. Attempting to
5 discover information. You know, it's like -- what I'm
6 getting at do you have any case law that says abuse of
7 process can be not actually issuing process but thinking
8 about it or threatening it or something like that?

9 MR. KNIGHT: The Della Donna case doesn't go into
10 investigation. The privilege issue really comes up as an
11 affirmative defense, Your Honor, and that's what the cases
12 say also.

13 THE COURT: I'm not talking about privilege.

14 MR. KNIGHT: As it relates to these allegations,
15 though, if some of them can be taken apart to say, well,
16 this one could be connected back to the process, i.e. the
17 pilots being deposed, et cetera, and the other one is more
18 flavor for the complaint. But to be able to spell out this
19 complaint so the Court can understand where we're
20 eventually going, because we haven't had these documents, I
21 think putting that into the pleadings is the correct thing
22 to do so that the Court can understand the complexity of
23 this and what's involved and why we need to find out more
24 so that we can get into the specifics. Clearly, we have
25 enough for abuse of process. Whether or not some of these

1 individual paragraphs would not survive or individual
2 sub-part As or Bs, you may be correct. But I think the
3 Court needs that in the amended complaint to get the
4 overall flavor of what the abuse of process cause of action
5 is.

6 THE COURT: That may be. But what you've, you've
7 alleged these as specific acts of abuse, though. You don't
8 allege this as some kind of background or context or
9 something like that.

10 MR. KNIGHT: And we did -- we allege it but I
11 understand Your Honor's point saying how is that connected
12 to the process because they did go forward and actually --

13 THE COURT: It says --

14 MR. KNIGHT: -- they didn't serve the celebrities
15 they just threatened to serve the celebrities.

16 THE COURT: I'm just reading what you said. This
17 is not my words. It says the defendants made illegal,
18 improper and perverted use of the process by utilizing
19 unreasonable discoveries, unnecessary discovery, or
20 threatening to take discovery and then you list. And some
21 of these it seems to me are not actionable as a matter of
22 law, the way you've pled it anyway. I mean, maybe --

23 MR. KNIGHT: I think Your Honor's point is that
24 it should have been more to the general allegations of the
25 preamble rather than the specifics.

1 THE COURT: I'm also concerned about the fact
2 that you've lumped all the defendants together in one --
3 two defendants, I guess, together without specifying which
4 did which. And I understand it's kind of a chicken before
5 the egg, egg before the chicken.

6 MR. KNIGHT: Chicken or egg or cart before the
7 horse, Your Honor, it's all the same thing. When we look
8 at these privilege logs we see the involvement of so many
9 people and the Court rightfully said let's try to amend the
10 complaint. Now, we did the best we can with the facts we
11 have but they are still playing this we're not going to
12 give you anything defense, which puts us, you know, in a
13 position where certainly they should not be able to take
14 that as an advantageous position and now say, oh, let's go
15 ahead and dismiss this complaint and we'll still hide all
16 of these documents from you we haven't given. Certainly,
17 these documents, many of them are waived. Many of them are
18 privileged on their face, et cetera. We want to know the
19 who, the how, the when. And then there could be additional
20 abuse of process allegations in there with more specificity
21 but at it relates to this complaint itself, it has enough
22 of the four corners to survive the motion to dismiss.

23 THE COURT: Anything further?

24 MR. SCAROLA: Yes, sir, Your Honor. What we have
25 heard is, indeed, a cart before the horse argument. We

1 filed this defective complaint because we haven't gotten
2 the discovery that will enable us to file an appropriate
3 complaint. You need to have the basis to sue first. And
4 you need to state a viable cause of action first. You
5 don't excuse obvious defects in your pleading on the basis
6 that you haven't yet gotten the discovery that you hope is
7 going to provide a basis for some cause of action and I
8 don't know what it is. What Echevarria says is, quote, in
9 the Levin case the 11th Circuit certified a question to
10 this Court asking whether Florida's litigation privilege
11 protects the acts of certifying to a trial Court an intent
12 to call opposing counsel as a witness at trial in order to
13 obtain counsel's disqualification. And later failing to
14 subpoena and call that person as a witness from a claim of
15 tortious interference with a business relationship.
16 Answering in the affirmative we extended the litigation
17 privilege to all torts finding that absolute immunity must
18 be afforded to any act occurring during the course of the
19 judicial proceeding, regardless of whether the act involves
20 a defamatory statement or other tortious behavior. And
21 here's the qualifications that Your Honor referenced
22 earlier. So long as the act has some relation to the
23 proceeding.

24 There is no allegation anywhere in this amended
25 complaint that any of these acts had no relation to the

1 pending claims against Mr. Epstein, which most clearly
2 included claims for punitive damages.

3 And the fact that airplane pilots are not asked a
4 single question about the particular victim in the cases
5 being prosecuted doesn't mean that what was going on on
6 those airplanes on a routine basis that formed part of a
7 pattern of criminal activity on Mr. Epstein's part was not
8 relevant and material to the punitive damage claims that
9 were being investigated and prosecuted legitimately by
10 Mr. Edwards. The fact that he took an aggressive, thorough
11 approach on behalf of his clients. And took discovery
12 reasonably calculated to lead to admissible evidence. And
13 there is no allegation that any of this discovery was not
14 reasonably calculated to lead to admissible evidence, those
15 allegations do not appear without specifically alleging the
16 exception recognized by the Florida Supreme Court, this
17 complaint fails. And it is no excuse to say, maybe I'm
18 going to find some evidence somewhere that allows me to
19 assert some legitimate cause of action, if you allow me to
20 proceed with discovery on a case -- on a pleading that does
21 not state a legitimate cause of action.

22 We start hearing again about the theory of damage that
23 no longer appears in this complaint. That is Mr. Epstein
24 had to pay more to settle these cases than he otherwise
25 would have had to pay to settle these cases if Mr. Edwards

1 weren't out there putting all of this pressure on him.
2 Well, that's, that's Mr. Edwards' job to maximize the value
3 of his client's claims by putting as much legitimate
4 pressure on the defendant as he possibly could and he,
5 obviously, did an extremely effective job.

6 So this complaint clearly needs to be dismissed on all
7 of those grounds that we have asserted. And one thing that
8 is not addressed at all in the argument that we just heard
9 is the sword/shield problem that they have. Now, this is
10 an amended complaint so we know the sword/shield issue
11 exists because we've already deposed the defendant. Excuse
12 me. We've already deposed the plaintiff.

13 THE COURT: Let me tell you, Mr. Scarola, I'm not
14 going to dismiss the complaint based upon that at this
15 stage. The reason, very simply, is that we can't really
16 know what the sword/shield doctrine applies to until I know
17 what the lawsuit is about. And I don't know what the
18 lawsuit is clearly about at this point because there's
19 certain things, obviously, that he can object to and I'm
20 not making that determination at this point in time.

21 I am going to dismiss the complaint with leave to
22 amend, however. I find some serious problems with the
23 complaint. Specifically, number one, that you have lumped
24 together the defendants and it's not, it's not, in my view
25 not a, not a basis to make vague allegations that are

1 nonspecific to a particular defendant because you haven't
2 gotten some privileged documents yet.

3 Because you got to come out, if you think this
4 gentleman, or anybody, has made, committed a tort, then you
5 have to allege it and then you get to the discovery that
6 you want. The abuses of process, if they occurred in this
7 case, occurred. They're not privilege. They occurred as
8 part of the lawsuit.

9 Now, Mr. Edwards' involvement or lack of involvement
10 in some alleged Ponzi -- not alleged Ponzi scheme, I guess
11 it's a fact it's a Ponzi scheme by Mr. Rothstein, that
12 may be subject to all of these privilege objections and
13 how -- whether he was involved or not involved and what he
14 did or didn't know and all of that kind of stuff. But the
15 process was in the lawsuits. You have to know at this
16 point in time what he did or didn't do that was an abuse of
17 process. I don't know how you can't know at this point in
18 time because it either, it was either calculated to do
19 something with that litigation or it was abuse for that
20 litigation.

21 MR. KNIGHT: Your Honor, we will re-allege with
22 more specificity. Thank you.

23 THE COURT: How much time do you need? And it's
24 been a problem with this case from day one, okay. And I
25 know I've mentioned it several times before without

1 getting, knowing what it is that we're litigating, it's
2 very difficult to make decisions on all of these other
3 issues you guys are talking about, including sword and
4 shield, including privilege, including whether or not, you
5 know, Mr. Edwards has to answer questions or Mr. Epstein
6 has to answer questions, unless we know exactly what,
7 number one, the claims are against -- what the abuses are.
8 And let me back up. Some of these things the way you've
9 alleged them, at least in my view, are not abuse of process
10 as a matter of law. The mere threatening of doing
11 something without doing it, I don't -- unless you get a
12 case that says that's abuse of process, I don't see how it
13 is.

14 The others, I think, could be if they're alleged
15 properly. If you're taking a deposition and asking
16 questions in that deposition for the sole purpose of what
17 you have alleged here or for the purpose unrelated to
18 actually prosecuting the litigation, then I think that can
19 be abuse of process.

20 But the mere notifying somebody, I have trouble
21 understanding how Paragraph Five is an abuse of process. I
22 have trouble understanding attempting to conduct discovery.
23 Or, I mean, some of these I just don't see how actionable.
24 So I think you need to, to plead it more specifically.

25 And, also, I think you need to specify. The included

1 but not limited to damages doesn't cut it. If you got
2 special damages, I think you have to plead them. Now, you
3 can always amend, if you find out there are other damages
4 down the line that you have not claimed.

5 But see, one of the issues in this case is going to be
6 what your damage claims are may have something to do with
7 what discovery is or is not calculated to lead to
8 admissible evidence in this case.

9 So I'm granting the motion with leave to amend. How
10 much time do you need?

11 MR. KNIGHT: Thirty days, Your Honor.

12 MR. SCAROLA: We would object to thirty days,
13 Your Honor. This case has been going on for a very long
14 time. This is now a single count complaint. Ten days
15 ought to be more than adequate to get this filed.

16 THE COURT: Well, I'm going to go ahead and give
17 you thirty days to amend. Okay. The next issue, I guess,
18 on the --

19 MR. ACKERMAN: Your Honor, I've got some blank
20 orders on all of the motions. Do you want --

21 THE COURT: Well, I'm going to ask you guys to
22 fill them out for me. It would make it easier for me.
23 Okay.

24 MR. ACKERMAN: Okay.

25 THE COURT: The next one is the motion for

1 punitive damages on the counterclaim, is that?

2 MR. SCAROLA: Yes, sir.

3 THE COURT: Let me, I don't want to take your
4 time, Mr. Scarola, and let me tell you what I'm going to do
5 on that. I'm going to deny the motion. I already heard an
6 argument on it. I already read some of the materials. And
7 here's the reason I'm denying the motion at this point, and
8 it's without prejudice. The rule, and I think it's
9 Rule 1.190. Is that it? Was -- yeah. 1.190, which is the
10 rule on amended and supplemental pleadings, was amended in
11 two thousand, I believe, 2003 pursuant to Florida Statute
12 768.72 to give guidance as to how you go about doing this.
13 And the footnotes to the Civil Rules of Procedure -- and
14 this is a problem we had before this rule came out -- cites
15 to, it says that subsection is amended to comply with the
16 case of Beverly, Beverly Health And Rehabilitation
17 Services, Inc. versus Meeks. And I had been applying this
18 case before they actually incorporated it into the rules,
19 but that case specifically said, it set up a procedure, at
20 least, in the Third District for motions for punitive
21 damages. And I'll quote from paragraph -- I don't know
22 what page it is here. But, basically, says this -- and
23 I've been applying this in the past, as well. Accordingly,
24 it is and shall be the practice of this Court to require a
25 written summary of the evidentiary proffer with appropriate

1 page and line citations, deposition testimony, affidavits
2 need to be filed and served in advance of the hearing so
3 the defendant will have a reasonable opportunity. The
4 motion doesn't do that.

5 MR. SCAROLA: It does, sir, respectfully.

6 THE COURT: I pulled it. The one sitting here
7 doesn't have it.

8 MR. SCAROLA: May I call the Court's attention
9 to the very first paragraph of the motion that says the
10 counter-plaintiff, Bradley J. Edwards, moves this honorable
11 Court for an entry of order granting him leave to assert a
12 claim for punitive damages against the counter-defendant,
13 Jeffrey Epstein. And in support thereof would show that
14 the record evidence presented to the Court in support of
15 Edwards' motion for summary judgment satisfies every
16 statutory prerequisite for the assertion of a claim for
17 punitive damages. That summary judgment motion, if Your
18 Honor recalls, includes an extremely detailed recitation of
19 record evidence and, specifically, cites to page and line
20 numbers in supporting depositions, to specific paragraphs
21 in supporting affidavits, and, clearly, by virtue of what
22 is presented to the Court and incorporated by reference
23 every conceivable requisite for a proffer is included in
24 that incorporated summary judgment motion.

25 Now, if what Your Honor wants us to do is to give you

1 that summary judgment motion back again and change the
2 title on the summary judgment motion to say now it's a
3 proffer.

4 THE COURT: I want you to make a motion pursuant
5 to what I have just said. I don't want any incorporated
6 things, you know. The same thing with your motion to
7 dismiss. You know, when you incorporate something else
8 that doesn't work for me. I need it in front of me. I
9 need the page, line so I can read it as a motion.

10 MR. SCAROLA: Do you really want that box of
11 material back again?

12 THE COURT: I got the box. I saved the box. I
13 knew this was coming. I got the box. I need your motion.
14 I need it to be specific because your summary judgment
15 motion dealt with a lot of other stuff, too, not just with
16 the evidence for punitive damages. Okay. And the other
17 thing was that on the summary judgment motion, if I recall
18 right, one of the reasons I denied the motion was discovery
19 not being completed at this point, if I recall.

20 MR. SCAROLA: I think that was the only reason
21 that Your Honor denied the summary judgment motion, which,
22 obviously, would not be any legitimate opposition to a
23 motion to assert a claim for punitive damages.

24 THE COURT: Again, Mr. Scarola, we're going to do
25 it my way.

1 MR. SCAROLA: I understand.

2 THE COURT: I want you to file your motion, set
3 it for hearing and I'll look at it. And then it goes on to
4 say that what happens is the other side, okay, this has to
5 be done, at least thirty days, at least, this rule says
6 thirty days before the motion, before the motion is set for
7 hearing. To give the opportunity for the defendants to
8 file something specifically in opposition, page and line
9 and that way I can compare and contrast. That's the way I
10 like to do it. And it makes -- it's easy when you have an
11 alcohol related case or something like that. It's very
12 complex in these cases and, you know, I just do not have
13 the ability to go back and do it. So I want you to do
14 that.

15 MR. SCAROLA: I understand the Court's direction.

16 THE COURT: So that's without prejudice and file
17 your motion. Okay. Now, having said all of that, where
18 are we in terms of the trustee and bankruptcy and Judge
19 Carney and where are you at? Because I read his order and
20 his order seems to say I agree with Judge Crow has to
21 control the discovery in this case but it runs the risk of
22 having conflicting orders. And I kind of agree with that,
23 as well. So where are we at in terms of discovery with the
24 trustee?

25 MR. ACKERMAN: Well, we need to back up a little

1 bit.

2 THE COURT: Okay.

3 MR. ACKERMAN: Okay. Your Honor, when this
4 matter started, and I know you've heard some of it but
5 because it's been awhile, I would like a little latitude.

6 THE COURT: Sure. We got the day so I'm here.

7 MR. ACKERMAN: Initially when this case began the
8 prior law firm representing Mr. Epstein issued a subpoena
9 to the bankruptcy trustee that was in possession of records
10 that we believe were related to this lawsuit. Okay. That
11 met -- were relevant to the claims that had been pled. At
12 that time Mr. Scarola did not object to the issuance of the
13 subpoena and I have that here. Okay. When the subpoena
14 was served on the bankruptcy trustee we then had four or
15 five or six motions filed on the grounds of privilege. And
16 since the bankruptcy trustee controlled and was directing
17 those matters before Judge Ray a special master was agreed
18 by the party to be appointed.

19 Now, also at that time -- and this is going to come up
20 in answer to one of these other motions -- one of the other
21 creditors, razorback, had also subpoenaed substantially the
22 same amount of documents. Substantially subpoenaed the
23 same documents that we had subpoenaed. And it was their
24 understanding that they were going to be participating in
25 this proceeding with Judge Carney. Now, each time we got

1 up to a deadline there was an order, order given to the
2 Farmer firm and Mr. Edwards to prepare a privilege log.
3 They were given numerous extensions.

4 THE COURT: Just so I understand. The Farmer
5 firm is now where these cases are at or went to after the
6 Rothstein --

7 MR. ACKERMAN: That's correct. And that's where
8 Mr. Edwards is now. And they had lodged only privilege
9 objections as to attorney-client and work-product materials
10 as to this subpoena. When the special master was appointed
11 we began a series of meetings and hearings to try and deal
12 with these special master issues. And what that ultimately
13 culminated in was an agreement, a confidentiality
14 agreement, where Mr. Scarola's clients would produce,
15 approximately, five boxes of documents that were designated
16 work-product, attorney's eyes only, which meant only the
17 lawyers for Mr. Epstein could look at them. And what they
18 designated to be irrelevant documents, which they believed
19 had nothing to do with the case, but felt that it was
20 easier to produce them and put them under a confidentiality
21 order so, and those were allowed to be shown to our client.

22 Now, if any of the parties believed that any of those
23 documents were relevant or appropriate to be used in this
24 proceeding, they were to take that to the special master.

25 THE COURT: You say this proceeding, you mean my

1 proceeding?

2 MR. ACKERMAN: This case, your case. Okay. And
3 they were to be gone to the special master. Now, about
4 that time we were arguing the motion for summary judgment.
5 Counsel for Edwards had argued to Judge Ray that, wait,
6 until the summary judgment motion is argued, defer ruling.
7 All of those were denied.

8 At one point they had asked you to pull back the
9 subpoena that had been issued on these matters and you
10 denied that. So then they prepared a privilege log that
11 was, clearly -- it's in our binder. There is two privilege
12 logs.

13 THE COURT: Fortunately, I looked at it.

14 MR. ACKERMAN: The first one, clearly, doesn't
15 meet any requirements regarding the privilege log so we
16 filed motions directed to that. The special master ruled
17 that you have to, at least, identify the people on it. We
18 felt that the log was also inadequate, okay, for other
19 reasons. And so the special master ordered a master list
20 of the people, a master list prepared, which is here, that
21 identified who the people were. Okay. And in the meantime
22 Razorback went ahead and filed a motion before Judge Ray to
23 participate in this special master hearing.

24 Then we came in court on a hearing filed by a
25 non-party who, Spencer Kuvin, had argued that since he was

1 identified on the privilege log as receiving some of these
2 documents, he was going to assert a joint prosecution,
3 joint defense type of privilege. Now, when we were at that
4 hearing, at that point in time the special master had
5 generated his report. The special master had set up a time
6 when we were going to go through, he was going to go
7 through the documents with everybody in the room and, at
8 least, eliminate the ones that are obviously not privilege,
9 which you can do by looking at this log. I mean, one can
10 do, okay, by obviously looking at it. And then we were
11 going to break them down into what issues related to what
12 privileges because there was a different standard of proof
13 that related to the different privilege. For example, it's
14 the burden of the plaintiff to establish the joint defense
15 agreement and we were going to do that.

16 Now, as that was occurring, Mr. Kuvin came in and
17 argued his position and the Court was stating its position
18 that you were in charge of the privileges, which we agreed.
19 And that you were in charge of discovery, okay. And you
20 put a stay on any discovery to the special master and it
21 effectively shut down the special master. I mean, you put
22 a stay on any subpoenas to the bankruptcy trustee.

23 THE COURT: From this Court?

24 MR. ACKERMAN: From this Court.

25 THE COURT: I didn't do anything to anybody else.

1 MR. ACKERMAN: No. You did from subpoenas issued
2 from this Court.

3 THE COURT: It could have only been your
4 subpoenas or Mr. Scarola's subpoenas.

5 MR. ACKERMAN: Correct.

6 THE COURT: Somebody read my order otherwise.
7 They can continue with any other --

8 MR. ACKERMAN: No, no, I'm not saying that.

9 THE COURT: Okay. I'm sorry.

10 MR. ACKERMAN: If I said that, what I'm trying to
11 say your stay applied to subpoenas issued from this Court
12 to the bankruptcy trustee.

13 THE COURT: Right.

14 MR. ACKERMAN: Okay. And at that point in time
15 we were at the point in time where you said we were in the
16 midst of the hearings that dealt with the amended complaint
17 and that you needed to have the complaint done. And we had
18 previously told you that we had, we believed we had a good
19 faith basis for this complaint. We could demonstrate that
20 Rothstein was definitely guilty of a crime. We could
21 demonstrate definitely that the Epstein case files were
22 shown to investors for the purpose of getting money that
23 ultimately came in to the Rothstein firm. We can show that
24 Mr. Rothstein, and some of these are in the complaint, I'm
25 not re-arguing that, but, we could show at that time that

1 Mr. Rothstein made specific representations to these
2 investors about what he could do. And then we can show
3 that Mr. Edwards carried those out. And that Mr. Edwards
4 testified in his deposition that it was a very limited
5 number of people involved. And then what, in fact,
6 occurred was that Mr. Rothstein was meeting with Mr.
7 Edwards and the rest of the firm on this and they were
8 having meetings about it, thus, providing the link to the
9 theory of our cause of action as the abuse of process. And
10 the theory of abuse of process related to a misuse of the
11 judicial system. The use of these proceedings for some
12 other purpose, that purpose to further this Ponzi scheme.
13 It meant going after his friends individually. Putting --
14 taking steps and taking actions that had nothing to do with
15 those, those victim cases.

16 Now, at that point in time we had subpoenaed the
17 communications between Rothstein and the various investors,
18 which is the first subpoena. And the second subpoena
19 related to the law enforcement subpoenas. Because at that
20 point in time, for one respect, Mr. Edwards has subpoenaed
21 and has requested, we're going to get to it later, records
22 between Mr. Epstein and the U.S. Attorney's Office. He has
23 used those records as part of a summary judgment
24 proceeding. We believe in the records that have been
25 produced to us that they specifically, particularly when

1 you look at some of the items in the privilege log, that
2 they specifically undertook the course of action to further
3 this Ponzi scheme to interfere with a non-prosecution
4 agreement that had already been reached with the
5 government. Okay.

6 It's not a tortious interference claim. It's a claim
7 where they were abusing the Court system by using discovery
8 mechanisms to bring about a breach or get the government to
9 come to regress or retreat from the agreement it had
10 entered into it after Mr. Epstein had pled guilty. Had
11 served his time. Was on probation and already had
12 substantial reliance and change of position on agreement.
13 And that was done, we believe, to show investors what they
14 were doing to advance this Ponzi scheme. So when we sent a
15 letter -- a subpoena, which is why that is in the pleading,
16 because it's evidence relating to the interference. This
17 was a CVR case. And that case was filed by Mr. Edwards in
18 2009, okay. At the time his cases were pending with
19 Mr. Epstein. There is a long lapse of what occurred, okay,
20 until these cases get settled. And then he files a
21 pleading in the federal court and he had represented in the
22 underlying case that the documents he wanted regarding the
23 law enforcement documents were necessary because they might
24 lead to other discoverable evidence in that case. And then
25 in the CVR case, which is pending before Judge Marra now,

1 he said I finally got the documents I wanted for the CVR
2 case. So he, in fact, misrepresented to a magistrate why
3 he wanted those documents.

4 So then there is an order entered by the magistrate
5 that says any of the documents that were produced -- and I
6 have a copy of it here -- any of the documents that were
7 produced pursuant to that order cannot be used in any
8 proceeding absent a ruling by the Court on those issues.
9 Now, some of those documents have already been filed.

10 THE COURT: The Court meaning?

11 MR. ACKERMAN: You.

12 THE COURT: Okay.

13 MR. ACKERMAN: The sitting magistrate or judge
14 for which the documents are sought to be used, okay. And
15 those are some of the documents that are in the summary
16 judgment binders. Okay. And those were done for the
17 purpose of being able to bring -- to make their summary
18 judgment argument.

19 Now, when we got to that stage in April, based on the
20 Court's ruling we -- the special master proceeding stopped.
21 We indicated to the Court at that time that we believed
22 that on its face some of these matters in the privilege log
23 the Court can look at and rule on and determine that they
24 were not privilege and they are not waived and we were
25 going to request the Court to do that. As far as Judge Ray

1 is concerned, the Court, you, have the ability to determine
2 these matters yourself in terms of how it affects your
3 case. He is not going to be doing anything, and he stated
4 that on the record in one of the proceedings in the
5 bankruptcy court, that he's not going to be making an in
6 camera review. He's going to allow you to handle that
7 process, okay. I mean, you as opposed to him ruling on the
8 privilege issue, is what I'm trying to say.

9 Now, that's pretty much where we are in terms of --

10 THE COURT: Let me ask you a question before you
11 proceed. If there are other parties seeking these
12 documents for which there was a special master appointed,
13 why did my order, which merely stayed my subpoenas, stop
14 production of documents in the trustee if other people are
15 seeking these documents for reasons unrelated to this
16 lawsuit?

17 MR. ACKERMAN: Here's what happened. Your order
18 stopped it for us.

19 THE COURT: I understand that.

20 MR. ACKERMAN: Okay. And I have a copy of the
21 pleadings, if you need to see them. But Razorback --

22 THE COURT: I read the order. I know what it
23 says.

24 MR. ACKERMAN: Razorback went in there and said
25 we want to do a 2004 exam of Rothstein and we want these

1 records. And the records are substantially the same as the
2 ones we wanted. They filed a motion to clarify this in
3 front of Judge Ray, okay. And this is where one of the
4 issues came up that he was not going to be ruling on stuff
5 that related to you. And I have in the binder there the
6 transcript of the hearing where Mr. Scarola and his clients
7 agreed to produce the documents that they are now claiming
8 privilege on and have produced those documents to
9 Razorback. So the documents that we're seeking here for
10 which they claim privilege, for which we have a
11 confidentiality agreement, they have produced voluntarily
12 to a third-party. We believe there's a waiver. We believe
13 that invalidates the confidentiality agreement. And
14 basically what happens is we're here arguing untold
15 privilege issues when the very documents that we're seeking
16 they have voluntarily turned over to a third-party without
17 any issues of privilege. Without any issues of
18 confidentiality. And that's what happened to them. Those
19 documents were turned over and that's why that transcript
20 of that proceeding is in there because we're prepared to
21 argue that many of the documents that we have requested for
22 which privilege claims have been brought are now waived.
23 And I've also asked to use some of the documents, to use
24 confidential documents because I believe it supports our
25 cause of action and I believe that the confidentiality

1 provisions are now waived.

2 So the answer to your --

3 THE COURT: That makes it as clear as mud. I
4 know -- just understand my frustration. It's very
5 complicated when you, you know, you're telling me all of
6 this and it's not really clear to me. Let me ask a simple
7 question. The privilege here, the attorney-client
8 privilege belonged to the clients, are they involved in
9 this at all? I mean, is anybody protecting the rights of
10 these women that were --

11 MR. ACKERMAN: Your Honor, Mr. Farmer and
12 Mr. Edwards have asserted attorney-client privilege on
13 behalf of those clients but many of these privileges that
14 they have asserted are work-product.

15 THE COURT: Okay.

16 MR. ACKERMAN: Or there is one with confidential
17 source so we have no idea.

18 THE COURT: Just so I'm understanding, are there
19 two separate sets of documents, one is in the hands of the
20 new law firm and the ones that are in the hands of the
21 trustee and bankruptcy from the old Rothstein firm?

22 MR. ACKERMAN: Yes and no.

23 THE COURT: Yes and no. Okay. Good.

24 MR. ACKERMAN: The first set of documents, okay,
25 which were the subject of the first subpoena and our first

1 request to produce, the trustee turned over those documents
2 responsive to that to the special master and to the new law
3 firm. The new law firm has also turned those documents
4 over to Razorback.

5 The second set of documents, which we're here on,
6 relate to our subpoena to the trustee for law enforcement.
7 Basically, communications between law enforcement agencies
8 and the RRA law firm. Those documents -- and those were
9 the basis of a specific request identifying people -- and
10 those documents have been gathered by the trustee on a disc
11 ready to be produced. And they have not been turned over
12 to anyone because the Court's stay order that said any
13 subpoena directed to the trustee is stayed.
14 So the trustee has not turned over those documents. Those
15 are in the possession of the trustee.

16 THE COURT: Okay. So there are -- let me --
17 there are two sets of documents then. The law enforcement
18 documents, which are in the possession of the special
19 master of the trustee proceeding, right?

20 MR. ACKERMAN: The law enforcement documents are
21 just in the possession of the trustee.

22 THE COURT: Trustee.

23 MR. ACKERMAN: Not the special master.

24 THE COURT: They're in possession of the trustee.
25 The other documents, which were the old Rothstein firm

1 files or materials, as well as anything for the new firm
2 are all, Farmer has all of those documents?

3 MR. ACKERMAN: Those were documents that came,
4 that the trustee picked up --

5 MR. SCAROLA: Yes.

6 MR. ACKERMAN: Yes.

7 THE COURT: And they are in the hands of, in
8 addition, they are in the hands of the special master, he
9 has those?

10 MR. ACKERMAN: Right.

11 THE COURT: Okay.

12 MR. ACKERMAN: Now, there is a third set of
13 documents, okay. They are called Qtask and the Fortress
14 documents, okay. Those are the softwares that managed the
15 cases within the Rothstein firm. The trustee is still
16 litigating to get those documents with Qtask. The Court
17 has --

18 THE COURT: Who is -- help me out here. Who is
19 Q?

20 MR. ACKERMAN: Qtask is a company that supplied
21 the software system for private communications and, also,
22 for case management to the Rothstein firm. We have
23 received through exhibits and other depositions in the
24 bankruptcy case, that Rothstein used some of this secure
25 software communications to communicate with the investors

1 and people in his firm about his Ponzi scheme as related to
2 the Epstein cases.

3 Now, those records were subpoenaed and sought by the
4 bankruptcy trustee from a company named Qtask. That
5 company is owned and controlled by former Rothstein
6 lawyers, Bob Buschel, and others. They have been ordered
7 by the bankruptcy court to produce those records and have
8 failed to do so and now are subject to -- and have been
9 ordered under pain of contempt, including incarceration of
10 the individuals, to produce those records. They have been
11 assessed punitive fines and attorney's fees for not
12 producing them as of --

13 THE COURT: So we have three sets of documents,
14 am I correct now? Okay.

15 MR. ACKERMAN: So that's one of the reasons why
16 in terms -- I understood your question as to the ones we're
17 dealing with now but I need to alert the Court there is
18 another group of documents that would be responsive to our
19 initial subpoena but that the bankruptcy trustee would need
20 to produce when Qtask and the Fortress documents become
21 available.

22 THE COURT: Okay. So we have the Rothstein and
23 Farmer documents, the file, whatever, may be in existence.
24 We have a law enforcement file that dealt with Rothstein.
25 And you have the Qtask, I guess, software system.

1 MR. ACKERMAN: And Fortress.

2 THE COURT: That have not been produced yet but
3 will at some point be in possession of the trustee in
4 bankruptcy.

5 MR. ACKERMAN: Correct.

6 THE COURT: What we're dealing with, at least at
7 this point in time in terms of your production request,
8 deals with the Rothstein/Farmer documents and the law
9 enforcement documents; is that correct?

10 MR. ACKERMAN: Yes.

11 THE COURT: Okay. So where do we start then?
12 That's where I want to -- where do you want to start with
13 this? I mean, one of the problems, again, is that -- let
14 me stop. Start with this. Is it possible that since
15 Judge Carney has already spent, I imagine, countless hours
16 looking at this, that he could do it for me as well as the
17 trustee in bankruptcy?

18 MR. ACKERMAN: The problem we've had, Your Honor,
19 is that we believe that the more economical method to do
20 this would be for you to take a look at the privilege log
21 and determine initially whether they have been waived and
22 some of the motions here are directed to that. And --

23 THE COURT: Maybe I should stop and ask how many
24 documents are we talking about? If we're talking fifty
25 thousand to a hundred thousand --

1 MR. ACKERMAN: No.

2 THE COURT: -- there is no way.

3 MR. ACKERMAN: If you look at the special master
4 report --

5 THE COURT: I did read. He said like sixteen
6 hundred documents, or.

7 MR. ACKERMAN: Those are sixteen hundred entries.
8 They are not necessarily documents.

9 THE COURT: That means it could be thirty
10 documents per entry or something like that.

11 MR. ACKERMAN: I'm sorry, sixteen hundred
12 documents.

13 MR. SCAROLA: May I address the Court?

14 MR. ACKERMAN: Twenty-eight thousand pages.

15 THE COURT: What I'm going to do, I'm going to
16 let him finish, take a break for lunch. We'll come back
17 and you tell me what your position is, okay.

18 MR. SCAROLA: I would like to take five minutes
19 before lunch because it may keep us from coming after
20 lunch.

21 MR. ACKERMAN: I don't know if I can finish. But
22 the point -- I want to answer your question is that the
23 breakdown we're talking about, sixteen hundred documents
24 that are identified on the privilege log. Now, we believe
25 that if you review the privilege log and make rulings

1 because of either the inadequacy of the logs, because they
2 have failed to comply with the Teague requirements, and we
3 believe if you go through and see that some of the matters
4 clearly aren't privileged on their face, that number will
5 be greatly reduced and then you can do the in camera
6 review. It would also give you an opportunity to
7 understand what we're trying to accomplish and what we're
8 trying to plead in this case because then you could review
9 the documents that we have. One of the reasons I want to
10 use --

11 THE COURT: These documents are in some location?

12 MR. ACKERMAN: Yes, they're on discs.

13 THE COURT: Okay.

14 MR. ACKERMAN: They're on a disc. Okay. You can
15 have hard copies, too, if you wish, okay. Either way it
16 can be done. But one of the reasons, one of my other
17 motions that I wanted to get directed to goes to this
18 matter because we had this confidentiality agreement where
19 we agreed to keep them secret. I submitted those documents
20 to you in camera. Those are documents we wanted to start
21 using now in discovery for depositions because part of the
22 issue is we can't --

23 THE COURT: These?

24 MR. ACKERMAN: Those ones.

25 THE COURT: Okay.

1 MR. ACKERMAN: Okay. We can't really effectively
2 take discovery --

3 MR. SCAROLA: No objection.

4 THE COURT: I'm sorry?

5 MR. SCAROLA: No objection.

6 THE COURT: Okay.

7 MR. SCAROLA: I don't mean to interrupt but I can
8 save some time.

9 THE COURT: Okay. Let him have five minutes and
10 we'll come back and let you say whatever you want,
11 Mr. Ackerman, okay. And then come back, okay. Go ahead,
12 sir.

13 MR. SCAROLA: There are specific documents that
14 have been identified by Mr. Ackerman from among those
15 documents that have been provided to them pursuant to an
16 agreement that they would like to use. As long as it is
17 expressly understood that by agreeing to the use of those
18 specific documents we have not prejudiced any assertion of
19 privilege with regard to any other documents, we're
20 prepared to allow them to use them. They are worthless. I
21 really don't care whether he uses them or not. I just
22 don't want to impact upon any other privilege argument that
23 we may make by making that concession. I am obliged to
24 make sure that we continue to protect all of our other
25 privileges because we don't have the right to waive

1 attorney-client privilege. Unlike the Fifth Amendment
2 privilege, which is controlled by Mr. Epstein, as much as
3 we might like to take all of this and put it on the floor
4 in this courtroom for Your Honor and everybody else in the
5 world to take a look at because we have nothing to hide, we
6 can't do that.

7 THE COURT: I understand that.

8 MR. SCAROLA: Okay. So we're obliged to assert
9 our privilege.

10 THE COURT: It's not your privilege.

11 MR. SCAROLA: We are obliged to assert the
12 privilege on behalf of our clients. Not only on behalf of
13 the clients who we represented whose claims were settled
14 but also because that same information is relevant and
15 material to ongoing claims against Mr. Epstein, we must
16 protect the work-product privilege, as well, because of the
17 obligation that we have to protect the interests of those
18 other clients. That's the position that we are in. Now,
19 before we ever get to questions about privilege and an
20 obligation to prepare a privilege log, and an in camera
21 inspection, the threshold issue is relevance. And it was
22 as a consequence of Your Honor's recognition of the fact
23 that there was a threshold relevance issue that Your Honor
24 stayed enforcement of any subpoena or production request in
25 this Court until such time as the pleadings were clarified

1 so that the relevance issues could be determined.
2 We are still in that same position today as a consequence
3 of the rulings that Your Honor has just made. We can't go
4 any further this afternoon. As much as I would like to, to
5 help to resolve these issues because the same threshold
6 problem exists. We have a relevancy concern that must be
7 addressed before any privilege concern can be addressed.
8 That's our position, sir. So I would like to get it done
9 today. We've got today set aside. I would love to be able
10 to resolve all of these issues. It cannot be done and
11 that's why I suggested that I needed five minutes before
12 lunch, Your Honor. I don't think I took three.

13 MR. ACKERMAN: I have a response to that but we
14 can do it after lunch. It's up to you.

15 THE COURT: No, go ahead. Actually, that was my
16 concern initially because, I mean, from day one in this
17 case, Mr. Ackerman, and I think I articulated this a number
18 of times the problem I had initially with the complaint. I
19 know you are not the author of the original complaint,
20 okay, I know that. Was that I couldn't get a handle on
21 what exactly the claims were and what the issues were going
22 to be to determine what was relevant or calculated to lead
23 to admissible evidence in the case. I think by filing your
24 amended complaint, we're getting it down to, I think where
25 we're going to ultimately end up at some point but we still

1 haven't gotten to that point. One of the things that
2 really concerns me is the vagueness of the damage claims
3 here because that has to do with some of the discovery, for
4 example, that they can get of you. So, I mean, I guess I
5 can make decisions on whether or not privileges have been
6 waived. If it's been waived, it's been waived.

7 MR. SCAROLA: Still doesn't resolve the relevance
8 issue, Your Honor.

9 MR. ACKERMAN: I need to respond.

10 THE COURT: I understand that. But I can make a
11 determination -- I'm sorry. Go ahead.

12 MR. ACKERMAN: I didn't mean to interrupt. I'll
13 let you finish.

14 THE COURT: Please, any help I can get.

15 MR. ACKERMAN: Okay. There is a two part process
16 with this relevance test. And the first part, we have
17 argued this back and forth several times with you and with
18 the special master, which is why we had some frustration
19 with that proceeding, when this subpoena went out with the
20 complaint that it was operating under, the first complaint
21 that everyone has been referring to, there was absolutely
22 no objection on relevance filed at that time. And under
23 the rules of procedure that is when it's supposed to be
24 done. We argued relevance. They argued, attempted to
25 bring up relevance. Really did not bring up relevance in

1 front of Judge Ray. The only motions that were filed in
2 front of Judge Ray related to privilege. Once we got the
3 special master we started -- they started arguing relevance
4 again. And one of the hearings in February the special
5 master ruled, I'm not going back to relevance. That ship
6 has sailed. You could have objected when this subpoena
7 went out the special master ruled. And now we're at the
8 point of doing the privilege stuff. That's the first
9 aspect of it.

10 The second aspect of it is that there is enough
11 matters here that the Court should rule on to allow some
12 discovery without the need of another complaint. Because
13 it allowed the process to proceed in some areas. The
14 damages, you know, that's, that's not a significant part of
15 this, okay. That's not -- the part we're looking for and
16 the subpoena we're talking about deals with documents to
17 the trustee and the firm related to the Ponzi scheme.

18 THE COURT: Let me suggest to you, however, that
19 the other concern here has to do with my schedule, my
20 ability to devote time to reviewing documents and privilege
21 logs for things that may ultimately end up not relevant to
22 the lawsuit. Okay. We're talking about thousands and
23 thousands and thousands of documents. I'm not a special
24 master getting paid \$300 an hour to look at documents.
25 I've got eighteen to two thousand other cases out there.

1 You guys want me to sit down and spend two days looking at
2 documents, it seems to me that I ought to make a
3 determination as to whether they're relevant before I do
4 that but, you know, I understand your position.

5 MR. ACKERMAN: The determination of the relevance
6 is on the request. That's what they're objecting to and
7 they have not -- they've waived the request. You can look
8 at the subpoena.

9 THE COURT: I understand that but then I have to
10 look through ten thousand documents to determine whether
11 they're privileged or not.

12 MR. ACKERMAN: I don't think -- my point earlier
13 was is that when you make --

14 THE COURT: I don't think you're understanding
15 what I'm saying. What I'm saying is it's important to me,
16 because I don't want to spend valuable Court time reviewing
17 documents to determine whether they are privileged or not
18 privileged or whether the privilege has been waived, if
19 those documents are not relevant to this lawsuit. That's
20 my point. Does that make any sense to you? You know, you
21 know, there is a finite amount of time that I have
22 available to do this and I'm going to spend as much time as
23 necessary to get it done. But I would like to be able to,
24 at least, do it in a rational manner rather than just go
25 out and look at documents. And because I would have to

1 look at the documents, it seems to me, unless it's been
2 waived specifically, Mr. Ackerman, or are already, then for
3 me to determine whether they are or are not privileged it
4 requires me to look at them, does it not?

5 MR. ACKERMAN: Yes. But I don't believe that the
6 issue of relevance is part of it.

7 THE COURT: You are not following me, I guess.

8 MR. ACKERMAN: They have claimed. We have sent a
9 subpoena. The subpoena has been responded to based on the
10 subpoena. Based on specific certain terms relating to the
11 subpoena. And the documents you are going to be reviewing
12 are work-product relating to the Epstein case.

13 THE COURT: Maybe I'm not making sense and I
14 apologize. You don't understand what I'm asking or what
15 I'm suggesting. I understand what your position is.

16 MR. ACKERMAN: I understand the overall concept.

17 THE COURT: I understand your position that these
18 have been waived, okay. What I'm concerned about is the
19 time necessary to review --

20 MR. ACKERMAN: That I understand. I understand
21 the time component.

22 THE COURT: Okay. Let's take a short break for
23 lunch. Be back here by 1:30. We'll talk about -- I'm
24 going to go forward this afternoon, do as much as I can on
25 this to get as much done as I can. So, at least, on the

1 confidential sealed documents, which is Tab 4C, the ones
2 here in my hand, as I understand Mr. Scarola agreed that
3 those documents may be utilized by the plaintiff in this
4 lawsuit, as long as it's clear, and I so rule, that by
5 doing so is not waiving any privilege associated with any
6 documents whatsoever on any basis.

7 MR. SCAROLA: Thank you, sir.

8 MR. KNIGHT: Thank you, Your Honor.

9 (LUNCH BREAK)

10 THE COURT: Anybody want to say anything else
11 before we start plowing through some of the motions?

12 MR. SCAROLA: Did you have a nice lunch, sir?

13 THE COURT: Well, no. The company was good.

14 MR. ACKERMAN: May I take off my coat?

15 THE COURT: Excuse me?

16 MR. ACKERMAN: Mind if I take off my coat?

17 THE COURT: Sure.

18 MR. ACKERMAN: It's a little warm.

19 THE COURT: My deputy has on a heavy jacket. She
20 is saying it's cold.

21 MR. WEINBERG: Afternoon, Your Honor. I've been
22 nominated by Mr. Knight and Mr. Ackerman to try to respond
23 to the Court's last set of inquiry, which is how we, as
24 counsel, can help facilitate the privilege review and how
25 we can narrow down the magnitude of sixteen hundred

1 documents, which might, at least, theoretically require
2 document by document review down to a more manageable
3 perspective. I think there are two ways --

4 MR. SCAROLA: Excuse me. Before we proceed could
5 I know which motion we're on? I suggest that maybe the
6 best thing to do, if we're going to proceed here, is to
7 focus on those matters that are currently pending. And I
8 have no objection to taking them in the order in which they
9 appear in the notebook with which the Court has been
10 provided. And that would mean the first motion before the
11 Court is our motion for reconsideration regarding our
12 discovery request.

13 THE COURT: First thing, I kind of asked counsel
14 to kind of give me some overview of the discovery process
15 and what we're dealing with here and I assume this is what
16 we're still dealing with.

17 MR. KNIGHT: This is in response, Your Honor.

18 THE COURT: That's what I want to do and then
19 we'll deal with the motions in order as we have them.
20 Okay.

21 MR. WEINBERG: Thank you, Your Honor. I'm not a
22 civil lawyer. I've been asked by my colleagues to help,
23 particularly, because of some expertise in privileged areas
24 and that's the reason they've asked me to address this
25 issue. There is two ways.

1 One Mr. Ackerman, at an appropriate time, will address
2 with the Court and that is whether there is a legally
3 enforceable waiver, not of the relevancy issue that was
4 previously addressed, but of the privilege issue that would
5 make a particularized document by document privilege
6 analysis unnecessary.

7 The second is more difficult. Privilege logs are
8 important. The case law that's been provided to Your
9 Honor, principally, the Teague case requires more than
10 Mr. Scarola has provided in terms of this privilege log.
11 It's particularly important in terms of giving us the
12 ability to narrow down from the sixteen hundred documents
13 to have any potential ability to narrow it down so we're
14 asking the Court to review not sixteen hundred, but two
15 hundred, three hundred, four hundred. I can't promise you
16 in good faith that a better privilege log will permit us to
17 reduce the number of documents that we believe potentially
18 could be related to the issues that ultimately will be
19 litigated before Your Honor. But as it stands now there
20 are privileged entries, for instance, RRA, meaning
21 Rothstein firm lawyers, to Mr. Edwards. Mr. Edwards to
22 Rothstein firm lawyers. We don't even know which Rothstein
23 firm lawyers they are. The log lacks that degree of
24 particularization which the rules and the case law
25 requires.

1 It's particularly important because once Your Honor
2 resolves the legal issue of waivers, which I believe can be
3 done on a category basis rather than a document by document
4 basis, Your Honor will ultimately be looking at whatever
5 reduced number of documents there are to put them in to
6 three categories.

7 Number one, these are documents that, in fact,
8 demonstrate that Mr. Edwards gave proper ethical legal
9 representation to his three clients. These documents are
10 related to that representation. These documents are
11 therefore unwaived and privileged and not subject to an
12 exception under client fraud.

13 The second category would be documents that may have
14 Mr. Edwards, he's either the author or the receiver but may
15 also involve that subset of lawyers in the Rothstein firm
16 who were not engaged in good faith ethical legal
17 representation of the three clients that Mr. Edwards
18 represented. Who he represented before he came to
19 Rothstein, who he represented afterward. There are, again,
20 twenty lawyers and nine paralegals and many investigators
21 and it's hard absent of a more particularized log and
22 absent the Court's review of some of the documents. For
23 instance, some go to Rothstein. Some go to RRA. May
24 involve an investigator named Jenny that Mr. Edwards said
25 he never asked him affirmatively to do anything on behalf

1 of his clients. So this is that rare firm where there
2 can't be a presumption of ethics, a presumption of legality
3 and to simply tell us in a log the communications were
4 with, quote, "RRA lawyers" or with, quote, "investigators"
5 doesn't help resolve whether they're in the category of
6 ethical lawyering or criminal fraud, which would be an
7 exception to the privilege.

8 There is also, as a result of one of the documents
9 that Mr. Scarola didn't object to us using, an e-mail --

10 THE COURT: Let me back up. I thought the crime
11 fraud section dealt with fraud or crime being committed by
12 the client not the attorney.

13 MR. WEINBERG: Not necessarily, Your Honor.
14 Crime fraud exception has been used over and over again,
15 for instance, by the government when they are investigating
16 lawyers. And this really is why I'm here because before
17 Judge Hoovler I represented a criminal defense lawyer named
18 William Moran. He was one of many lawyers charged in the
19 late 1990's. His law firm was searched. Many more
20 documents than Mr. Scarola has identified in the log was
21 seized. The Court, Judge Hoovler, appointed Lawrence
22 Barcello, who was a former Department of Justice
23 prosecutor, because crime fraud was key. And in that case
24 what was key is whether it was the crime or fraud of the
25 lawyers not of the lawyers' clients.

1 In this case, and, again, I'm not hurling any -- this
2 is not the time for me to make allegations.

3 THE COURT: We'll deal with that later. I mean,
4 I just finished, probably, a three day trial on crime fraud
5 exception. I thought I read every case, including some of
6 the similar cases dealing with tobacco manufacturers
7 dealing with the crime fraud. And I'm having a little
8 trouble with that but I'll deal with it when we get to that
9 point. Because it seems to me --

10 MR. WEINBERG: I will, if the Court wants --

11 THE COURT: Not now.

12 MR. WEINBERG: -- supplement through other cases.

13 But clearly the lawyer can't claim work-product when his
14 work-product is in furtherance of a crime. Mr. Rothstein
15 is a lawyer. He could not protect his documents from
16 litigation or from the government by saying you can't see
17 my documents, they are work-product. If the lawyer is
18 creating the crime, as Mr. Rothstein did, there's no
19 privilege to prevent third-parties or Courts from reviewing
20 the documents.

21 THE COURT: We'll deal with that later. That's
22 not my understanding but I didn't think it was quite as
23 broad as you just stated but --

24 MR. WEINBERG: Let me supplement that piece of
25 this argument --

1 THE COURT: What you're telling me, though, is
2 that you feel that the amount of documents that I may be
3 able to, or have to review, once I get past the issue of
4 whether or not there has been a waiver on the relevance
5 issue, is that there may be waivers in regard to the
6 attorney-client privilege to begin with.

7 And that second, we need a more particularized
8 privilege log because from the log itself we can't tell
9 whether some of these documents may or may not have other
10 exceptions applicable to them.

11 MR. WEINBERG: Exactly, Your Honor. And I can't
12 say, I cannot make a representation that a better log will
13 reduce it to the number that the Court would feel
14 comfortable reviewing. If the Court is not comfortable
15 with what results from a more particularized log and after
16 hearing Mr. Ackerman on the waiver issue --

17 THE COURT: I'm not sure comfort is the issue.

18 MR. WEINBERG: Economy.

19 THE COURT: I hate to tell you but in camera
20 reviews are probably the least favorite thing I do but you
21 have to do them. You have to do them. Okay. Anything
22 else you want to tell me?

23 MR. WEINBERG: Just lastly, Judge, we now, as one
24 of the documents Mr. Ackerman found in attorney's eyes
25 only, we have an e-mail from Cara Holmes --

1 THE COURT: You're talking about these documents?

2 MR. WEINBERG: One of the lawyers at the
3 Rothstein firm. She was a former FBI agent and she says on
4 July 29, I think our best bet is to go after those close to
5 Epstein. And those would be the kind of gray documents
6 that Your Honor would have to make a document by document
7 analysis to determine does this document support good faith
8 litigation. Is it in relation to a proper representation
9 of Mr. Edwards' client or instead is some investigator
10 going off on an intrusive, violative conduct that only is
11 to further Mr. Rothstein's ambitions to try to inflate the
12 Epstein cases to advance his own investor scheme? I don't
13 have an answer because I don't have the documents. I'm not
14 making accusations about where any one document will fit.
15 I'm hopeful through a log that is more particularized we
16 can come back and say, Judge, we would like you to look at
17 the following three or four hundred. I can't represent we
18 can. If we can't, we would, of course, would then go and
19 recommend to the Court what Judge Hoovler did in this
20 massive law firm search, which is to consider the Court
21 looking at some of the documents, either on review or
22 de novo, and having a special master and, perhaps, a
23 special master with experience in crime fraud such as a
24 former U.S. Attorney. I know Mr. Goldberger can identify a
25 few from the community who would have ongoing experience

1 from their prior jobs as an assistant U.S.
2 Attorney, with how documents fit into these three
3 categories. Thank you, sir.

4 THE COURT: You know, I certainly have no
5 objection to appointing a special master, however, I'm not
6 a federal court. I don't have the authority to do that
7 absent the consent of the parties, as I understand it.
8 Although some of my colleagues try to get around that rule
9 by appointing a mediator, I think it's still, whatever you
10 call it, put a sign on a cow and call it a pig, it's still
11 a cow.

12 You want to say anything else in response to that
13 before we get into the nitty-gritty of the specific motions
14 here?

15 MR. SCAROLA: Very narrowly, Your Honor. I
16 disagree with the assertion that's been made that an
17 attorney's involvement in a crime or fraud in which the
18 client is not participating can constitute a waiver of the
19 client's privilege. The crime fraud exception is an
20 exception that waives the client's privilege when the
21 client is using an attorney to advance the client's crime
22 or fraud. I think that counsel is incorrect about the
23 assertion that he's made regarding the crime fraud
24 exception. But talking about these things in the abstract
25 is not going to advance this.

1 THE COURT: Okay. Let's go forward with so what
2 motion would be first up then?

3 MR. SCAROLA: It is our motion for
4 reconsideration of Your Honor's order sustaining objections
5 to requests for admissions and interrogatories propounded
6 to Mr. Epstein.

7 MR. ACKERMAN: Your Honor, before he proceeds, I
8 think that the actual discovery requests were left out of
9 the notebook for this.

10 THE COURT: Yeah, I've looked at the --

11 MR. ACKERMAN: So I have -- the one for the
12 request to produce is in there. I have the interrogatories
13 and --

14 THE COURT: I think I've got the request.

15 MR. ACKERMAN: Request to produce is there but I
16 don't think request for admissions.

17 THE COURT: The response.

18 MR. ACKERMAN: The response is there. But the
19 actual request and the interrogatories are not.

20 THE COURT: Okay.

21 MR. ACKERMAN: So you can put these in your book
22 at Three a. I apologize for not having it.

23 THE COURT: Okay.

24 MR. SCAROLA: Your Honor, this motion for
25 reconsideration cites to the now less than recent Fourth

1 DCA opinion in Alvarez versus Cooper Tire where the Court
2 finds it to have been error for the trial Court to have
3 restricted discovery, which I suggest to Your Honor is even
4 less clearly related to the allegations that are pending
5 then the allegations in this case and their relationship to
6 our request for admissions and interrogatories. If we can
7 take a look quickly at --

8 THE COURT: Let me ask you a question about that.
9 That's Judge Fine's tire case, right?

10 MR. SCAROLA: Yes.

11 THE COURT: As I understand, is that still on
12 rehearing?

13 MR. ACKERMAN: Yes, and I have a docket sheet for
14 you to look at.

15 THE COURT: I'm concerned that case is gone a
16 little too far in the discovery and I, well, I don't know
17 what's going to happen.

18 MR. SCAROLA: Let me suggest to Your Honor that
19 regardless of whether the broader parameters that are
20 described in that case are or are not applicable. I think
21 that Your Honor simply misapprehended what the appropriate
22 scope of discovery in this case is.

23 THE COURT: Okay.

24 MR. SCAROLA: And I call your attention. We're
25 looking at --

1 THE COURT: Let me read the ones again that we're
2 talking about because I didn't have them right here in
3 front of me, the requests themselves.

4 MR. SCAROLA: My suggestion is that you start
5 with the counterclaim itself because you'll understand
6 their relevance more if you understand the counterclaim
7 first.

8 THE COURT: I read that this morning but let me
9 go back and read this again.

10 MR. SCAROLA: I would just call your attention
11 particularly to the allegations in Paragraph Five and Nine.
12 If you look at those first and then we go to the discovery,
13 I think it's hard to draw the conclusion that this is not
14 reasonably calculated to lead to discovery of admissible
15 evidence.

16 THE COURT: Go ahead. I'm listening.

17 MR. SCAROLA: All right, sir. Basically, what
18 this complaint says is that Mr. Epstein has engaged in an
19 extensive course of conduct that subjected him to civil
20 liability, both with regard to then pending cases and
21 potential additional cases, as well. And what he tried to
22 do, and continues to try to do in suing Mr. Edwards, is not
23 to assert a legitimate claim but to make an example of
24 Mr. Edwards to deter Mr. Edwards and others from suing him
25 for the legitimate claims that exist that are out there

1 ready to be filed. So that's the contention in the
2 broadest terms.

3 So request for admission number one, you have acted on
4 sexual preference for minor females on multiple occasions
5 over the course of, at least, the last decade. Defining
6 the scope of Mr. Epstein's motive to conceal his misconduct
7 both in terms of restricting his civil liability and his
8 punitive damage exposure, I suggest to Your Honor is, at
9 least, reasonably calculated to lead to admissible
10 evidence.

11 Two, you have engaged in sexual activity with more
12 than forty minor girls between 2002 and 2006 in your
13 residence in West Palm Beach, Florida. Which is where
14 Mr. Edwards' clients were assaulted.

15 Three, among the minor females with whom you have
16 engaged in sexual activity between 2002 and 2006 was a
17 person identified in a civil lawsuit filed against you as,
18 and those are the identifications of Mr. Edwards' three
19 clients.

20 So, clearly, an acknowledgment from Mr. Epstein that
21 he, in fact, engaged in sexual activity with these minor
22 clients is relevant and material to what we contend is the
23 motive.

24 Now, if Your Honor may recall, we understand that
25 there is very likely to be a Fifth Amendment privilege

1 asserted with regard to each of these requests for
2 admissions. But that's not the determination that Your
3 Honor is making right now. You're not determining whether
4 Mr. Epstein can or cannot reasonably assert a Fifth
5 Amendment privilege. You're determining whether this
6 discovery is reasonably calculated to lead to admissible
7 evidence to the claim, the counterclaim that we have
8 brought against him. I'm quite frankly very puzzled as to
9 how you could arrive at the conclusion that it is not when
10 it's these cases we are alleging that he was attempting
11 through this spurious lawsuit to avoid liability on.
12 All of these cases remained pending at the time that he
13 sued Mr. Edwards.

14 The next question, again, relates to these same
15 allegations with regard to these three clients of
16 Mr. Edwards.

17 Number five, talks about his having reason to believe
18 that they were minors at the time.

19 Number six goes directly to the evidence in the
20 underlying claims. And each of these are clearly
21 calculated to lead to the discovery of admissible evidence
22 regardless of what standard may be applied. What
23 reasonable standard may be applied in terms of the scope of
24 appropriate discovery.

25 Now, if Mr. Epstein asserts a Fifth Amendment

1 privilege with regard to these requests, we're entitled in
2 a civil case to draw inferences from that so we're entitled
3 to know whether he's going to assert his Fifth Amendment
4 privilege or not.

5 And they also continue to have bearing as long as some
6 affirmative relief is being asserted against Mr. Edwards
7 but because that pleading remains undefined I need to focus
8 exclusively right now on our pending counterclaim.

9 Each of these, and I don't know that I need to go
10 through them because the argument is the same with regard
11 to each of the request for admissions. They are all along
12 the same lines. I suggest that Your Honor simply made a
13 mistake when you denied that discovery.

14 The interrogatories are in some respects even more
15 puzzling. The first question is what is the full name and
16 Florida address of the person answering these
17 interrogatories?

18 THE COURT: Hang on. Let me get to that.

19 MR. SCAROLA: I'm sorry.

20 THE COURT: Where is my order on that?

21 MR. ACKERMAN: Your Honor, just to make things a
22 little bit easier. You sustained the objection to
23 interrogatory number one. And I don't have an explanation
24 but that's not an objection to be raised.

25 THE COURT: Which interrogatory are we talking

1 about because there is an interrogatory at the end of
2 these?

3 MR. ACKERMAN: The ones that we're talking about
4 are two, three, four, five, six, nine, seven.

5 THE COURT: Hang on, hang on. Where is the
6 order? I'm trying to find the order on that.

7 MR. ACKERMAN: It's in there. Three B.

8 THE COURT: Okay. I'm sorry.

9 MR. SCAROLA: No, it's not, it's not tab Three B.
10 It's --

11 THE COURT: I've got the order.

12 MR. SCAROLA: Okay.

13 MR. ACKERMAN: I'm sorry. Three A.

14 THE COURT: Yeah. I see where I did one, two,
15 three, four, five, six, nine.

16 MR. SCAROLA: You deferred as to eight.

17 THE COURT: And seven on attorney-client
18 privilege.

19 MR. SCAROLA: And seven on attorney-client
20 privilege. So I'm not sure what Your Honor was looking at
21 but I don't see how you can sustain the objection to number
22 one under any circumstances.

23 THE COURT: Actually, nor do I.

24 MR. SCAROLA: And number two, number two is going
25 to the same issues as the request for admissions. As is

1 number three. As is number four. Ghislaine Maxwell is a
2 woman who is alleged to have been a procurer for
3 Mr. Epstein who engaged in sexual conduct with the same
4 minor girls that Mr. Epstein was abusing. She was a
5 participant in his illegal conduct.

6 Number five had to do with the damages that were being
7 claimed. And, again, I can understand how we couldn't
8 address that one until we know what the damages are that
9 are being claimed now.

10 Number six has to do with engaging in sexual
11 activities with minors again.

12 Number seven, Your Honor has sustained on the basis of
13 attorney-client privilege and I think that Your Honor was
14 confused. Because William Scherer and the Conrad, Scherer
15 Law Firm, were not lawyers who ever represented
16 Mr. Epstein. Mr. Scherer and the Conrad, Scherer Law Firm
17 are attorneys who represented, and continue to represent,
18 Ponzi scheme victims. They have interests adverse to the
19 interests of Mr. Epstein. And it is our understanding that
20 information was provided by Mr. Epstein to the Conrad,
21 Scherer Firm and to William Scherer. We would like to know
22 what information they gave them that relates to these cases
23 and I don't know how that, that falls within an
24 attorney-client privilege.

25 You deferred as to number eight and I'm not sure why

1 that was deferred but I think that, certainly, is
2 information to which we're currently entitled. As is
3 number nine.

4 So I would ask the Court to take a look at these
5 again. I think somehow there was some confusion on the
6 Court's part. Perhaps Your Honor was focusing on the
7 complaint and not discovery relevant and material to the
8 counterclaim. If you focus on the allegations in the
9 counterclaim I think it's very apparent that this is
10 information we're entitled to have. Thank you, sir.

11 THE COURT: Thank you. Yes, sir.

12 MR. ACKERMAN: Okay. Your Honor, I would like to
13 start off by saying that we had a lengthy argument about
14 all of these issues, with the exception of number one,
15 which I don't honestly have an explanation for. But we
16 went through a lengthy argument about all of these issues
17 and one of the concerns that came up at that time was that
18 the Court was asking us whether or not, based on the
19 complaint, that these matters were going to be at issue.
20 We filed an amended pleading where we took these issues, to
21 the extent that they were remotely relevant in the first
22 complaint, out.

23 Even if you look at the amended complaint, there is
24 nothing there that puts these matters that he has asked
25 with this type of particularity in issue.

1 MR. SCAROLA: Excuse me, Your Honor. I conceded
2 that. We're not talking about discovery relating to the
3 complaint.

4 THE COURT: I'm sure he's going somewhere with
5 this, I suspect, so I'm going to let him go.

6 MR. SCAROLA: Okay.

7 MR. ACKERMAN: All right. Mr. Scarola argued at
8 that time his counterclaim issues, okay. And the Court
9 entered its ruling and the motion for reconsideration came
10 before this Court solely on the basis of Alvarez, okay.
11 That's the only reason the Court granted this rehearing.
12 And my first argument is is that if the Court is not going
13 to consider Alvarez as the grounds, this is done.

14 THE COURT: Well, any ruling, let me just say up
15 front, any ruling on the discovery matters, interlocutory
16 orders I can reconsider any time for any reason. The issue
17 that I want to find the time to go to today is whether or
18 not these are, in fact, calculated to lead to admissible
19 evidence in this case. So deal with that issue because I,
20 quite frankly, it's been awhile since you argued that issue
21 and I made my ruling.

22 MR. ACKERMAN: We objected, first of all, that
23 the scopes are burden -- the scopes are extremely large.
24 Mr. Scarola's counterclaim, which he's relying on, is an
25 abuse of process claim. His abuse of process claim is

1 directed at Mr. Epstein for this lawsuit. He, therefore,
2 has not done so in his counterclaim, needs to particularly
3 allege what process, what acts of the judicial system were
4 abused in this case as he has argued to this Court. And
5 that needs to be done before we undertake this broad,
6 extensive discovery.

7 Now, we have objected on the grounds of the Fifth
8 Amendment. And we have argued before on the sword and
9 shield and I need to say something about it at this point.
10 The issues that involve -- and the Court overruled them
11 when it came to the motion for summary judgment.
12 The sword and shield issues come on these lines. When a
13 plaintiff makes a claim and then claims privilege on
14 matters related to the case, then Mr. Scarola may have
15 a point. But nothing in this case, and he has not
16 particularly alleged why this case and the actions in this
17 case that have been taken by Mr. Epstein's counsel as abuse
18 of process raised these issues. Mr. Scarola has -- and,
19 therefore, the sword -- and this was briefed in the
20 response, our response to the motion for summary judgment.
21 It was extensively briefed on the sword and shield doctrine
22 and so I'm just going to direct the Court to that.

23 But in this case we have, he has asked about sexual
24 preferences, sexual activities. The scope of this is
25 extremely broad. It's extremely harassing. And given the

1 limitations of what he has to prove in his counterclaim for
2 abuse of process, nothing here remotely leads to any
3 discoverable evidence and that's why the Court denied it to
4 begin with. Engaged in sexual activity. So we're going to
5 have to invade all of these collateral matters. These will
6 take the Court, one of the arguments I made last time, on
7 a side trip that will take forever. We're not here, this
8 case is not here to litigate those matters. Our case and
9 Mr. Scarola's response are related to what the law firm did
10 with investors relating to the Epstein cases and how the
11 judicial system was perverted for a Ponzi scheme.

12 Mr. Scarola's response is, well, we're going to bring
13 an abuse of process claim and, frankly, I know we're not
14 here necessarily to re-argue it and the Court ruled in a
15 prior order that it was an abuse of process claim. But if
16 you look at it there is elements of defamation. There is
17 other elements of other cases. So I think before you reach
18 any issue with regard to whether these matters, he is going
19 to have to be required to replead his counterclaim with the
20 same particularity that you're requiring us to see how
21 sexual activity with all of these minor girls are going to
22 relate to an abuse of process claim. Okay.

23 Secondly, number three, he wants to know who he had
24 specific sexual activity with. That's not going to bear on
25 an abuse of process claim. Okay. He can make generally

1 the allegation that maybe Mr. Epstein filed this lawsuit to
2 harass Brad Edwards but this is not where it's going to go.
3 Okay. We don't have to get into the number of minor
4 females that he paid for. We don't have to get into all of
5 these specific dates. We don't have to get into the names
6 of this. And this relates to the motion that we have later
7 on relating to pre-trial publicity. Because this stuff
8 gets filed in this Court and the next thing we know it's in
9 the newspapers or the Internet. And the Court, if this
10 discovery proceeds, is going to be in a position of having
11 to deal with those issues that may potentially taint the
12 jury pool. So at this point they really have no relevance,
13 okay.

14 He's asked for socializing minor females in the
15 presence of these people. There is no charge, there is no
16 allegation that supports this. And an abuse of process
17 claim that he has pled, as it presently exists, including
18 transporting these and acts of trafficking minors, are
19 going to take us on a side trip. Now, with regards to --
20 that's pretty much related to the requests for admissions.

21 Most of the interrogatories fall under the same
22 category. We did raise Fifth Amendment objections there.
23 They are not related to pursuing whether his genitals were
24 exposed. Whether they were clothed in underwear have
25 nothing to do with the claim that we're proceeding with.

1 They cannot possibly lead to relevant evidence relating to
2 this. All it will do is be burdensome, harassing and
3 wasting the Court's time dealing with this.

4 The same thing with number three whether your genitals
5 were exposed. What was the number of times this lady,
6 Maxwell, engaged in activity with minor females? What does
7 that have to do with an abuse of process claim? This is
8 merely done for the purpose of harassment and has nothing
9 to do with the claims that are being brought, which is why,
10 I believe, the Court ruled in this matter. Here he wants
11 to know, number six in the interrogatories, with regard to
12 the last time you engaged in sexual activity with a minor
13 state the following. We don't need to get into that. This
14 Court doesn't need to spend its time on that. There is
15 nothing remotely related to this abuse of process claim
16 that's going to make that relevant.

17 The same thing with L.M. in number eight --

18 THE COURT: Let me just ask you, his argument is,
19 essentially, that the purpose of the abuse of process here
20 is to cover up these alleged conduct. Or to prevent
21 exposure of this alleged conduct by Mr. Edwards and others
22 like him. How do you respond to that? If it goes to the
23 motive of filing or abusing the process, how is that not --
24 if that's true -- how is that not --

25 MR. ACKERMAN: Well, first of all, Your Honor,

1 Mr. Epstein pled guilty, okay. There was an overall
2 settlement that dealt with a numerous number of victims as
3 part of that, okay. He served time. He was on probation,
4 okay. He entered into a non-prosecution agreement and
5 whether they are happy with what the government did or not
6 is really irrelevant. So how do you get to the point where
7 he wants to cover up all of this when the government has
8 concluded the investigation. They've agreed --

9 THE COURT: I guess it's the same reason your
10 client pled the Fifth Amendment. I presume your concern,
11 or not maybe concern, that doesn't protect him. I mean, I
12 mean, that's a logical answer. I don't know what happened
13 here. I'm just, I'm asking you to respond to his argument,
14 which is, look, if the abuse of process here is misuse of
15 the judicial system to silence Mr. Edwards and others like
16 him from pursuing claims against your client for sexual
17 activities with minor females or other sexual misconduct,
18 if that's his motive for doing it, how is it not relevant
19 that he's engaged in that conduct?

20 MR. ACKERMAN: Because the abuse of process claim
21 does not require the proof of motive. Okay. The abuse --
22 if you file --

23 THE COURT: It's not whether it requires proof of
24 it. Whether it's relevant to the cause of action.

25 MR. ACKERMAN: Well, if one of the elements isn't

1 one -- if the element of the abuse of process is that they
2 took a pending case and abused the system to put some
3 extortion on someone else, they got to establish that. To
4 extort or put pressure on Mr. Edwards he has to establish
5 that first before we go into all of these other matters.
6 Because if the process was legitimately used, it doesn't
7 matter what the motive is.

8 THE COURT: Well, I thought that abuse of
9 process, the whole theory of abuse of process was being
10 used for purpose unrelated to the process itself, i.e. to
11 cover up misdeeds or whatever the reason may be. At least,
12 the allegation. That is the reason or, at least, that's
13 their argument.

14 MR. ACKERMAN: Your Honor --

15 THE COURT: I'm just asking. I'm not ruling.
16 I'm asking questions here. So just, you know, he says the
17 reason that it's relevant is because the process is being
18 abused for the purpose. The reason it's being abused is
19 to, the ulterior motive is to cover up and otherwise
20 prevent the exposure of your client to these other
21 allegations by Mr. Edwards or others like him that may be
22 scared off or afraid to pursue it because of what he's
23 doing right now. At least, that's his argument.

24 MR. ACKERMAN: Your Honor, based on what he's
25 asking --

1 THE COURT: Uh-huh.

2 MR. ACKERMAN: -- you don't need to ask him this
3 way.

4 THE COURT: Uh-huh.

5 MR. ACKERMAN: We don't need to go through and,
6 for example, get healthcare provider records for sexual
7 disorder. There is no issue there. We don't need to go
8 through, in other words, what is the name and last known
9 address of every healthcare provider which you have been
10 treated or evaluated for sexual disorder. We haven't
11 placed that in issue. Okay. We don't need, and he doesn't
12 need to be able, if the Court is correct, and to follow the
13 Court's question, we don't need to know the date of every
14 single one of the actions. We don't need to show in detail
15 what he's asking about genitals. We don't need to know the
16 number of sexual matters that were involved with
17 Mr. Epstein to do that. He can introduce that by talking
18 about what, you know, what he's pled guilty to. But this
19 is such a broad request we have asserted a Fifth Amendment
20 privilege on it and he is making this argument in defense.
21 I mean, we were making that in defense of a counterclaim.

22 THE COURT: I'm sorry. I'm not ruling on the
23 Fifth Amendment privilege. I'm ruling on whether or not
24 these are relevant to the lawsuit and not whether your
25 client has the Fifth Amendment privilege.

1 MR. ACKERMAN: That's part of our objections
2 right now.

3 MR. SCAROLA: Which I am not asking be overruled.

4 THE COURT: I didn't understand it to be that
5 way. I understood it to be the question that was in front
6 of me. Your client can always say I object on the basis
7 but he has to specifically answer the question that way.
8 But the question was, that I thought we were discussing,
9 was whether or not he can be required to even give that
10 answer because if it's not relevant or calculated to lead
11 to admissible evidence, he doesn't have to give any answer
12 period.

13 MR. ACKERMAN: Your Honor, I just want to put on
14 the record that we've raised the Fifth Amendment.

15 THE COURT: Okay.

16 MR. ACKERMAN: Secondly, this is not calculated
17 to lead to any relevant evidence. It is calculated to get
18 harassing information that is over broad and has nothing to
19 do with, given this type of detail, with what he claims he
20 wants to prove, okay. The Court can certainly restrict
21 what he's asking. That's one of our objections. It's over
22 broad. It's harassing. It's very, very personal in terms
23 of doing it, okay. It certainly should be limited in time.
24 There is no effort here at all to limit the time. If the
25 Court -- he doesn't need to answer questions about his

1 genitals when they were exposed, okay. If the
2 interrogatory is rephrased so that it states that were you
3 subject to a number of victims' claims, if so, how many, he
4 can establish that, okay. But to go through and ask when
5 Maxwell engaged in sexual activity with a minor female,
6 what does that have to do with Mr. Epstein? Okay.
7 That's someone else. Okay. And whether he did these overt
8 sexual acts that are the subject of this request, that's
9 really the heart of the objection. I think, I still
10 contend it's not relevant based on what is there but,
11 certainly, if the Court is going to find that he wants to
12 prove motive, this isn't the way to do it. We're going to
13 have evidentiary issues with it. The Court has discretion
14 in discovery matters to limit it so as not to waste the
15 Court's time with unnecessary litigation. And at a
16 minimum, I still believe the Court needs to wait until
17 Cooper is involved, but at a minimum the Court should
18 sustain these objections and make him reask them so that
19 they are not, they're limited in time. They're limited in
20 not so much detail. And that they are calculated to show
21 why it's related to the claims in this lawsuit and these
22 don't meet that requirement.

23 THE COURT: Okay. Briefly, Mr. Scarola.

24 MR. SCAROLA: Your Honor is correct that motive,
25 while generally not an element of a tort, is always

1 relevant and material. And while motive is generally not
2 an element of a tort in an abuse of process claim where we
3 are obliged to show that the purpose behind the filing of
4 the complaint against Mr. Edwards, which is the process
5 that is clearly addressed in this counterclaim, the purpose
6 was unrelated to any legitimate purpose and was intended to
7 cover up an extremely broad pattern of conduct that could
8 subject Mr. Epstein to both additional criminal liability
9 and civil liability.

10 It is a very curious argument, indeed, that
11 Mr. Epstein has engaged in so much of this criminal and
12 tortious conduct that it would create an enormous burden
13 for him to answer the interrogatories about how many young
14 women he has abused. If that's the argument that is being
15 made, and it sounds like that's the argument that's being
16 made, they have the burden of supporting that
17 burdensomeness argument. But there is no way that the
18 Court could ever conclude that you have engaged in so much
19 misconduct that I'm not going to ask you to tell us how
20 much because it would be too much of a burden on you.

21 THE COURT: I didn't understand you to say that.
22 I thought you were saying it was over broad, not
23 burdensome. It's a different standard.

24 MR. SCAROLA: Well, the word burdensome was
25 spoken many times and it was related to the scope of what

1 was being requested and how many incidents would need to be
2 disclosed. As far as the scope is concerned where this
3 conduct took place, when it took place, the extent to which
4 it is going to expose Mr. Epstein to potential criminal and
5 civil liability is all relevant and material. There's
6 nothing overly burdensome about this at all.

7 MR. ACKERMAN: The burdensome part of it was the
8 detour that this Court would go on, if we go down that
9 path.

10 THE COURT: Okay. I've heard enough argument on
11 that. I'm not going to rule right off the top of my head
12 here. You'll get an order by the end of the week. I got
13 to think about this. Whichever way I go it's kind of like,
14 in a sense, a roadmap of where we're going in the future so
15 I really have to think about that more. What would be the
16 next one here we have to deal with, guys? I mean, I got a
17 pretty good idea what I'm going to do but I want to think
18 about it overnight before I put it on paper.

19 MR. SCAROLA: Your Honor, the next has to do with
20 our motion for protective order and objections to a notice
21 of taking deposition and appointment of special master in
22 an effort to re-depose Mr. Edwards.

23 MR. ACKERMAN: No, that's not the one.

24 THE COURT: I'm sorry.

25 MR. ACKERMAN: I don't believe that's the next

1 one.

2 MR. SCAROLA: Three B.

3 MR. ACKERMAN: The next one is Three B and Three
4 C. Motion for protective order relating to a subpoena that
5 we sent to the trustee seeking the law enforcement
6 documents.

7 MR. SCAROLA: Oh, I'm sorry.

8 THE COURT: So Three B.

9 MR. ACKERMAN: Three B.

10 THE COURT: Let's me pull that. Let's take about
11 a five minute recess. I've got something I need to take
12 care of real quick.

13 (BREAK TAKEN)

14 MR. SCAROLA: Your Honor, an issue has arisen
15 during the recess that the court reporter would like some
16 guidance on. One of the reporters has requested the
17 transcription of this hearing and to receive a copy and the
18 court reporter wants the Court's guidance as to whether she
19 can accept an order from someone other than a party in the
20 case.

21 MR. ACKERMAN: Your Honor, I would ask that you
22 defer that until we get to the motion relating to
23 prejudicial statements that we're asking the Court to enter
24 some restrictions on because of the use that has been made
25 of statements in this case that show up in the press that

1 relate to the sexual matters, which we believe aren't
2 relevant.

3 THE COURT: You are asking me to issue a prior
4 restraint order, is that what you're asking me to do?

5 MR. ACKERMAN: It's not a prior restraint order.

6 THE COURT: Well, what is it you are asking me to
7 do?

8 MR. ACKERMAN: We're asking you to enter an
9 order -- hold on a second.

10 MR. KNIGHT: Actually, at this point I think what
11 Joe is saying the court reporter issue, if we could take
12 that up at the very end because it may relate to some of
13 these other issues.

14 THE COURT: Let's make sure we get to it. Okay.
15 Because -- well, let's deal with it right now. Since it's
16 come up let's deal with it and we'll deal with it again, I
17 guess, in the order. But this is separate. This is an
18 open proceeding. I know of no case law that prevents
19 anybody from getting a copy of -- having a court reporter
20 type a deposition.

21 MR. SCAROLA: That's my understanding, sir.

22 THE COURT: I don't know of any. I mean, can't
23 somebody come and get a copy of anything that's in open
24 court. I don't know, if they're willing to pay for it.
25 Do you have any authority for that at all?

1 MR. ACKERMAN: Well, no, because I wasn't
2 prepared to deal with it today. My concern, though, is
3 that we have filed -- and this would be, if you want to
4 take this up now?

5 THE COURT: Well, I guess we better then we can
6 go ahead and take it up in order.

7 MR. ACKERMAN: Well, this would be sections Three
8 E and Three F.

9 THE COURT: Okay. This has actually never been
10 presented to me for hearing before, right?

11 MR. SCAROLA: This is new.

12 MR. ACKERMAN: This is new.

13 THE COURT: Okay. Give me a second, counsel.
14 Okay. Mr. Scarola, you filed a response to this?

15 MR. SCAROLA: Yes, sir, that's the next tab F.

16 THE COURT: Okay. I'll hear argument. I have to
17 tell you, gentlemen, it's been awhile since I've had this
18 issue come up. In fact, I think it's only come up once in
19 my judicial career but I will listen to argument. I will
20 not rule from the bench today. I have to look at these
21 cases again. It's been a long time since I read that
22 Supreme Court decision but go ahead, Mr. Ackerman.

23 MR. ACKERMAN: Yes, sir.

24 THE COURT: Okay. And did anybody favor me with
25 copies of these cases?

1 MR. SCAROLA: I did not, sir.

2 MR. ACKERMAN: I did not, Your Honor. We can
3 send them in.

4 THE COURT: I can look them up.

5 MR. ACKERMAN: One of the things that's been
6 occurring in this case, Your Honor, and a perfect example
7 of our position on it is the summary judgment documents.
8 Everything that Mr. Scarola and Mr. Edwards can do to raise
9 the issues of these sexual improprieties to insert in this
10 case, the Court can see that they are doing. Okay. Once
11 they file the stuff in the Court file it is then under the
12 law and under the bar rules able to be commented on. So as
13 a result, we've attached to the first motion and then the
14 amended motion these articles where Mr. Scarola is being
15 attributed to saying that he's a convicted pedophile.
16 That's not true. Okay. One of the things I want to
17 address in this motion is up until today Mr. Scarola has
18 constantly referred to Mr. Epstein as a pedophile.
19 Okay. And there has been no proof of that anywhere. And
20 it's inappropriate to do it in a Court proceeding and for
21 it to be quoted in this manner because it will taint the
22 jury pool. And also has no bearing on what the issues are.
23 Mr. Scarola is quoted in other areas about speaking to
24 Prince Andrew. There is an address book. All of these
25 will become issues in this case if this door gets opened.

1 There is articles where Mr. Scarola says they're
2 trying to get a statement from Prince Andrew. And it's our
3 view that these were published comments by Mr. Scarola
4 that's clearly trying to generate articles about
5 Mr. Epstein and that is not the place to try this case.

6 The Court does have discretion under the Miami Herald
7 Publishing McIntosh case to take control and prohibit
8 extraditorial commentary in order to ensure the party
9 receives a fair trial. And you can take steps to protect
10 against pre-trial publicity, as the Shepherd Maxwell case
11 discussed. The limitations imposed by the Court on
12 communications between the lawyers and/or litigants and the
13 media are permissible for good cause in order to assure a
14 fair trial. McIntosh case specifically states that
15 limitations placed on lawyers, litigants, and officials
16 directly affected by Court proceedings may be at the
17 Court's discretion. Muzzling lawyers who may wish to make
18 public statements has been long recognized it's within the
19 Court's inherent power to control professional conduct.

20 There is also a bar canon, 114-3.6 of the rules
21 regulating the Florida Bar, called trial publicity. It
22 talks about a lawyer shall not make an extraditorial
23 statement that a reasonable person would expect to be
24 disseminated by means of public communication, if the
25 lawyer knows or reasonably should know, that it will have a

1 prejudicial likelihood on material prejudicing an
2 adjudicated proceeding due to its creation of an eminent
3 and substantial detriment on that proceeding. This rule
4 incorporates the substantial likelihood of material
5 prejudice standard that the Supreme Court adopted.

6 And what's occurred, and the Court can look at the
7 docket sheet. I don't think I have it attached here. But
8 there was a recent filing that Mr. Scarola made that he
9 used in support of his punitive damages about an interview
10 with another alleged victim. He files it in the Court file
11 and then there is an article about it. That has also been
12 the case with some of these other articles. We have in the
13 amended motion, the article is Epstein Claim To Intimidate
14 Attorney Edwards Prosecuting Sex Abuse Cases. He's being
15 quoted here. Okay. Then there is another article in the
16 Daily News, Jeffrey Epstein Introduced Woman to Prince
17 Andrew. That's being quoted. Mr. Edwards is quoted. Then
18 there is a marketing firm that Edwards, Mr. Edwards' law
19 firm used where he states Mr. Edwards has successfully
20 represented ten women between twelve and fifteen years old
21 by proving that Mr. Epstein and his intentional sex
22 trafficking criminal enterprise exploited these girls.
23 There is simply no basis in fact for this, at least, based
24 on the knowledge we have of the number of cases
25 Mr. Edwards has handled.

1 We have a British publication called the Telegraph
2 that's published convicted pedophile. Well, he hasn't been
3 convicted as a pedophile. Okay. Much of the information
4 is from Mr. Scarola and he's quoted in the article that
5 we've attached and we put forth some of what he said. He
6 wants to speak to Prince Andrew. They want to obtain
7 additional details. We believe Prince Andrew has been in
8 the company of Mr. Epstein. And then we talk about The
9 Holy Grail that was reprinted.

10 Then there is another British publication called the
11 Observer, which Mr. Scarola is again quoted. We have
12 another article published in the Independant discussing the
13 same thing.

14 And we've got the Farmer Firm on their web site
15 issuing press releases and online articles referring to
16 Mr. Epstein and the lawsuits. And they refer to him on the
17 web site as the billionaire pedophile and he helped ten
18 women seek justice. Okay.

19 We don't believe it's appropriate to wage a media
20 campaign, taint the jury pool and pre-try this case in the
21 court of world opinion, particularly given the Internet.
22 Okay.

23 This is one of the reasons why I believe the Court
24 should deny the earlier request that we spoke about with
25 regard to the discovery on these specific sexual matters

1 because they will then be in the press. And that will be,
2 then we will be faced with real issues about a fair trial.
3 The Court can place these limitations --

4 THE COURT: Help me out here. The McIntosh case,
5 I read this and there has been some Supreme Court cases
6 since that decision, as I understand, that tell me what the
7 threshold or what the standard is that I have to apply
8 before I do that. I know I have the authority to do that.
9 I, certainly, have the discretion to do that but there's a
10 standard set forth in these cases, as I recall it, that
11 tells me what you, you or the person actually seeking this
12 restraint, is required to establish before, before I go
13 down there. So what is it, what do the cases tell me on
14 that?

15 MR. ACKERMAN: The Court -- we have proposed what
16 the Court can do. It says that no person covered by this
17 order --

18 THE COURT: No, no. You misunderstand me. Let
19 me ask the question again. I'm not asking you what you
20 want me to do in terms of restraint. What I'm asking you
21 is what is the threshold of the bar you have to reach in
22 order to get such a restraint? As I understood it, if I
23 recall right, the McIntosh case sets forth a standard that
24 I have to utilize before I, I use my discretion by entering
25 such an order. It's been awhile.

1 MR. SCAROLA: That standard is described in our
2 memo, Your Honor. It's quoted at page three, the top of
3 page three in our memo.

4 THE COURT: And your memo is at?

5 MR. SCAROLA: That's tab F. Comes right after
6 their memo.

7 MR. ACKERMAN: Hold on. To justify a prior
8 restraint the activity must pose a clear and present danger
9 or serious or eminent threat to a protecting competing
10 interest and that such a restraint cannot be upheld or --
11 cannot be upheld if reasonable alternatives are available
12 and that's what McIntosh says.

13 MR. SCAROLA: That's a direct quote from
14 McIntosh, Your Honor, that's correct.

15 MR. ACKERMAN: But the Court also -- and that
16 talks about pre-trial proceedings. Okay. This can go on
17 between now and the time we go to Court, as long as we are
18 discussing these issues. And by the time we get to trial,
19 you know, and the issue I think the Court is concerned
20 about is eminency. But we have a history right now that's
21 been established. If the Court allows this discovery to
22 proceed that we've previously argued and does not place --
23 and the case law says that a Court -- prohibition on
24 comment is an acceptable alternative to prior restraint,
25 which is cited in the Florida Freedom Newspapers versus

1 McCrary case, which is a Florida -- I'm sorry. Yeah,
2 Florida Supreme Court case 520 So.2nd 32. And it can
3 outline, the Court has also outlined other measures short
4 of prior restraint on publication. Okay. And that has
5 been held to be an appropriate way of doing it. And what
6 the Court can do, and what we're proposing to do, is enter
7 some pre-trial order that before any comments are made or
8 anything is filed relating of a sexual nature, the Court
9 review it and impose limitations on counsel before they
10 comment to the press. These matters are on the Internet
11 and there is really no way to deal with it.

12 THE COURT: The order I enter isn't going to
13 protect the Internet anyway.

14 MR. ACKERMAN: You can't stop the Internet. What
15 you can do is stop us, stop the lawyers from talking to
16 reporters about stuff before it gets filed in the Court
17 file. For example, Mr. Scarola recently filed an interview
18 of a woman that was an alleged victim of Mr. Epstein's
19 actions. He filed that with a pleading that said this is
20 being filed in support of some motion, followed by an
21 article in the paper. Okay. That's what we're asking the
22 Court to exercise some control over. The case law, as I
23 understand it, states that once it's in the public record
24 the lawyers are allowed to comment on it. But what we're
25 trying to do is prevent that so that we don't have an

1 unnecessary amount of pre-trial publicity on issues that
2 may not, and the Court may ultimately rule on, have nothing
3 to do with this case. Okay. You are not there yet on that
4 decision, okay, on what the ultimate issues are. And until
5 that occurs, the lawyers shouldn't be making any comments
6 to the press about sexual conduct claims involving
7 Mr. Epstein with the specificity Mr. Scarola has been
8 saying.

9 What we're proposing is that is contained on page
10 eight and nine of the amended motion. That basically
11 states that no person covered by this order shall make no
12 statement to the media that could interfere with a fair
13 trial. Notwithstanding that, the Court --

14 THE COURT: What page are you on?

15 MR. ACKERMAN: I'm on page eight and nine of our
16 amended motion.

17 THE COURT: Does this come out of a case?

18 MR. ACKERMAN: Yes.

19 THE COURT: What case? Because I wouldn't know
20 what in the world that could interfere with a fair trial or
21 otherwise prejudice the parties in administration of
22 justice means. That's kind of vague. You have a case that
23 that came out of?

24 MR. ACKERMAN: Yeah, I do, Your Honor. I have to
25 locate it. I believe I have it. Your Honor, I don't have

1 a copy of it. I'll have to get it to you. I thought I had
2 it with me.

3 THE COURT: Okay. Go ahead.

4 MR. ACKERMAN: But these cases do allow the Court
5 to make a balancing test between free expression and a fair
6 trial. And in this case, I don't -- we're asking for some
7 protection because if we end up, for example, doing a video
8 deposition --

9 THE COURT: There is a distinction between asking
10 for protection against publicity or statements being made
11 and asking for protection in regard to the integrity of a
12 fair trial. Those are two different things. You
13 understand what I'm saying? The mere fact that somebody
14 says something that your client finds offensive or doesn't
15 like or feels that he's been invaded by that comment is not
16 the same thing as my concern, which is, which is that there
17 is a fair trial in this case and can your client get a fair
18 trial with pre-trial publicity. You see what I'm getting
19 at? Because you seem to be focusing most on, you know,
20 this thing affects your client, are, you know, libel or
21 slander.

22 MR. ACKERMAN: No, no, that's not the issue, Your
23 Honor.

24 THE COURT: Okay.

25 MR. ACKERMAN: Here's the thing --

1 THE COURT: Because I don't have any evidence in
2 front me at this point that whatever pre-trial publicity
3 has gone on or been said or whatever has been said or done,
4 and I don't know what all has been done, has in any way
5 affected our ability to sit six jurors in this particular
6 case that don't know anything about this case and otherwise
7 are able to render a fair verdict.

8 MR. ACKERMAN: Here's what I ask the Court to
9 consider.

10 THE COURT: Okay.

11 MR. ACKERMAN: Okay. Let's hypothetically, and
12 we don't believe the Court should allow this to occur, but
13 hypothetically, let's assume that the Court allows a
14 substantial portion of the discovery that Mr. Scarola was
15 arguing about before, let's assume that that gets in the
16 Court file. Let's assume that Mr. Scarola or Mr. Edwards
17 is allowed to make continual media releases about it
18 between now and the time we have a hearing. Let's assume
19 that in response to some of these discovery requests we
20 will be filing motions under 90.404(b), which relates to
21 other bad acts, to keep that information out because it's
22 merely being introduced to prejudice the jury. The Court
23 will have to conduct a balancing test in terms of whether
24 its proposed relevancy is outweighed by the prejudicial
25 impact. Based on the information that they are seeking,

1 that will be an enormous task. Based on what is likely to
2 occur, if this occurs, there will be numerous media
3 publications continuously now through the case gets tried.
4 Okay. If it's tried. And at that point in time we will
5 then be faced with a potential jury pool that will have had
6 a steady dose of this and I believe that that is wrong to
7 do at this point, particularly, when the Court has not
8 solidified the issues about how extensive this will be.
9 And at that point I think the Court, it is well within the
10 Court's -- the Nebraska Press Association case states that
11 while restrictive orders unquestionably are permissible
12 within certain limits, the U.S. Supreme Court has not made
13 any distinctions between restrictive orders and prior
14 restraints. Instead, Nebraska focuses on balancing free
15 expression against competing interest in a particular
16 context.

17 In this case what I'm trying to say is that if my
18 hypothetical proves to be true, then we will be faced with
19 a jury that will be tainted because of all of the
20 publications. And we will -- if this case is limited to
21 abuse of process, and Mr. Scarola can inject this into it,
22 then the jury, in my opinion, and I will argue to the
23 Court, will not be able to set aside any instructions the
24 Court makes relating to 404(b) evidence. We have Fifth
25 Amendment issues that are coming up. And I submit that

1 before any further media reports occur that the Court at
2 least instruct the lawyers that there be no more media
3 discussions about the sexual activities until you've ruled
4 on whether they're relevant. And then place some control
5 on what the lawyers say so that by the time we do get to
6 trial the media -- the jury pool is not tainted, which
7 clearly will occur based on the pattern we've seen right
8 now.

9 THE COURT: Yes, sir.

10 MR. SCAROLA: We have filed an extensive
11 memorandum addressing these issues. It would be
12 unconstitutional for Your Honor to impose any type of gag
13 order on us at this point in time. Particularly
14 considering the fact that this matter has not even yet been
15 set for trial.

16 THE COURT: Not even at issue.

17 MR. SCAROLA: Not even at issue. We don't even
18 have a complaint filed yet. So the case law is clear that
19 there must be a clear and present danger that a jury pool
20 could be tainted by specific --

21 THE COURT: Does that standard apply to gag
22 orders as to the attorneys, as compared to power of
23 restraint of the press or something of that nature?

24 MR. SCAROLA: It applies to gag orders with
25 regard to attorneys.

1 THE COURT: Okay.

2 MR. SCAROLA: Yes, sir, it does apply to gag
3 orders with regard to attorneys. And the standards that
4 are applicable, I suggest to Your Honor, clearly cannot be
5 met under the present circumstances. And there is a
6 complete and total absence of proof before Your Honor that
7 we have engaged in any conduct whatsoever that could be
8 prohibited under any circumstances.

9 We have had the opportunity to appear on national
10 television. We have had the opportunity to conduct
11 extensive press interviews. We have had the opportunity to
12 issue press releases. We have not engaged in any of that
13 conduct. The press has taken a keen interest,
14 particularly, the foreign press has taken a keen interest
15 in this case and there have been a lot of articles that
16 have appeared in the British press ever since a victim of
17 Mr. Epstein's has made public statements that have
18 associated British royalty with Mr. Epstein.
19 They have been very interested in what is going on in this
20 case as a consequence of that. And we have had many
21 opportunities to speak to the foreign press about these
22 issues. We have scrupulously limited any response that we
23 have made to contacts initiated by the press to matters
24 that are matters of public record and available to the
25 press by going to the courthouse and reading this Court's

1 file.

2 If Mr. Epstein is embarrassed by Mr. Epstein's
3 conduct, that's Mr. Epstein's problem. And, quite frankly,
4 I'm pleased to hear that he's embarrassed by his conduct.
5 Maybe it will serve some deterrent effect in the future on
6 Mr. Epstein. And if this case and what Mr. Edwards has
7 been through serves the purpose of increasing Mr. Epstein's
8 embarrassment over Mr. Epstein's misconduct, that's great.

9 I will tell you that the focus of public attention on
10 this case has served the interests of my client because it
11 has produced witnesses that we otherwise might not have
12 known about. And I welcome further public scrutiny with
13 regard to this case for that reason because it will aid,
14 ultimately, in the pursuit of justice.

15 We object to any restraints. I will tell you that
16 once this case is set for trial we will scrupulously avoid
17 participation in any public comments with regard to this
18 case that could possibly interfere with our ability to
19 select a jury because the last thing we want to do is
20 interfere with our ability to get justice in this case.
21 Thank you, sir.

22 MR. ACKERMAN: Your Honor.

23 THE COURT: Yes, sir.

24 MR. ACKERMAN: Directing your attention to pages
25 five and six here is the bar rule and it specifically is

1 restricted to a lawyer shall not make extraditial
2 statements that a reasonable person would expect to be
3 disseminated that will have a substantial likelihood of
4 materially prejudicing an adjudicative proceeding.

5 THE COURT: Let me ask you this question.

6 MR. ACKERMAN: And that's incorporated into the
7 Gentile case, which you asked about earlier.

8 THE COURT: Okay.

9 MR. ACKERMAN: And --

10 THE COURT: I'm not sure that a Florida bar rule
11 provides legal authority for me under the constitution, to
12 enter an order. I mean, it may result in sanctions to the
13 lawyer.

14 MR. ACKERMAN: The bar rule, that's exactly what
15 Gentile says.

16 THE COURT: Tell you what, guys, I understand
17 both sides of the argument here. What I need to do is go
18 back and look at the cases. Do you all have them here?
19 It's been a long time since I read the cases that --

20 MR. ACKERMAN: May we submit them to you?

21 THE COURT: No. I want to go back and take
22 fifteen or twenty minutes and let me read the cases, make a
23 decision. This is something you guys need to know right
24 now because it's going to affect also what the court
25 reporter does.

1 MR. ACKERMAN: I don't have the Gentile case.

2 THE COURT: You got the cite for me? Oh, is that
3 one 501 US 1030. I got that one. I got the McIntosh case.

4 MR. ACKERMAN: I have McIntosh and Florida
5 Freedom Newspapers I can give you. I've marked them with
6 notes.

7 THE COURT: I think I can -- do you have any of
8 these cases, Mr. Scarola?

9 MR. SCAROLA: I don't have the cases themselves,
10 your Honor. They are quoted in relevant part extensively
11 in our memorandum.

12 THE COURT: Let me take a look at these. I'll be
13 right back. Okay.

14 MR. SCAROLA: Thank you, sir.

15 (BREAK TAKEN).

16 THE COURT: Okay. And I apologize for taking so
17 long. It's been awhile since I've read these decisions,
18 quite frankly. And I had an opportunity to read the ones
19 you've given me, as well as some that were actually cited
20 in some of the decisions cited after the ones you gave me.
21 Seems to me in reviewing these cases that Supreme Court of
22 Florida, as well as the Supreme Court of the United States,
23 made a distinction between the Court's discretion in
24 limiting comments by attorneys during or prior to a
25 proceeding, as compared to the public's right to knowledge

1 of trial proceedings, as guaranteed by the freedom of the
2 press in provisions in the United States constitution.
3 And, specifically, has held that prohibition on comments
4 is, in fact, different from prior restraint. And the press
5 has a right to print anything and we can't, or should not,
6 restrain that except in the most extreme of circumstances.
7 But the comments of counsel can be restrained.

8 Having said that, it seems the Supreme Court has
9 adopted, Supreme Court of the United States has adopted a
10 lesser standard when imposing limitations on comments by
11 counsel, as compared to any prior restraint of the press.
12 And the standard which is set forth seems to be substantial
13 likelihood of material prejudice and the Supreme Court of
14 the United States said that is a constitutional permissible
15 balance between the First Amendment rights of attorneys and
16 the guarantee of a fair trial.

17 Having said all of that, at this point I will deny the
18 motion simply on the basis that I have no evidence in front
19 of me that would establish that that standard, that
20 comments by counsel or anything that counsel has said, done
21 or would do, would have a substantial effect or substantial
22 likelihood of material prejudice to this case at this
23 point. I think that is an evidentiary thing that requires
24 me to make findings of fact and facts on the case before
25 you actually say, before you enter such a gag order you

1 actually have to make finding of fact that would support it
2 before you can prohibit the comments as an acceptable
3 alternative to any prior restraint. So I'm denying the
4 motion on that basis at this point in time because I just
5 have nothing in front of me other than this one motion and
6 hearsay documents, which are attached at this point in
7 time.

8 MR. ACKERMAN: May it be without prejudice, Your
9 Honor?

10 THE COURT: Oh, any ruling like this is without
11 prejudice. Okay. But having said there, I would hope
12 counsel, both sides, would understand the necessity for
13 having a fair trial in this case. And one of the comments
14 the Supreme Court made is that one of the reasons that the
15 courts do have some restrictions on the attorneys, aside
16 from them being officers of the Court, is sometimes their
17 statements are taken more authoritatively than others. So,
18 anyway, I'm denying the motion at this point and time.

19 Let's talk about, I see nothing in the rules that
20 would prohibit the press of obtaining a copy of this. They
21 can be in here photographing and videoing this entire
22 proceeding, as far as I know, without my permission.
23 Couldn't they?

24 MR. KNIGHT: Your Honor, the comment we made to
25 the court reporter before is we haven't ever researched the

1 issue. She should check with her office.

2 THE COURT: I'm not prohibiting it, is what I'm
3 saying.

4 MR. KNIGHT: I don't know what their normal
5 standards are and we did not want to comment on it.

6 THE COURT: Whatever she wants to do is her
7 choice. I'm not prohibiting the press from obtaining it,
8 if they want to obtain copies of the proceedings, they can
9 obtain it. I'm not entering any such order because it
10 seems to me the cases also said the press is entitled to.

11 I also point out that most of these cases were
12 criminal proceedings. I've never seen a civil case where
13 there has been a gag order and, perhaps, there are. But in
14 my twelve years, eleven years on the bench I've never seen
15 one in this courthouse or heard of one but that doesn't
16 mean it's not proper in the right circumstances.

17 Okay. Having said that, let's move on. What's next?

18 MR. ACKERMAN: Your Honor, that would be Three B
19 and C.

20 THE COURT: Three B and C. Okay. Go ahead.

21 MR. SCAROLA: Your Honor, this is the defendant's
22 motion for protective order and objections to a notice of
23 deposition duces tecum addressed to the trustee, Herb
24 Stettin, seeking a substantial number of e-mail
25 communications exchanged between RRA attorneys and

1 government officials and law enforcement officers. The
2 objection is to relevancy first. There are ten thousand
3 two hundred and fourteen pages of e-mails exchanged between
4 RRA attorneys and government officials and law enforcement
5 officers. And in light of the fact that there is no
6 pending claim against Mr. Edwards, that discovery certainly
7 couldn't be relevant or material to any pending claim
8 against Mr. Edwards. And in light of the allegations that
9 we have made, there is no reasonable argument that could be
10 made that that discovery is reasonably calculated to lead
11 to admissible evidence with regard to anything having to do
12 with the counterclaim.

13 So in the present state of the pleadings no relevancy
14 can be shown to the counterclaim. No claim is pending.
15 The best way for Your Honor to handle this at this point is
16 to grant our motion for protective order and if allegations
17 are made in the primary complaint which arguably could make
18 this discovery relevant, they can re-issue their subpoena
19 and we'll re-address it in the context of whatever
20 allegations are then made. I can't imagine that they are
21 going to make any allegations that could make this
22 information relevant or material.

23 The primary concern that we have is that if relevancy
24 generally were determined, we need to review ten thousand
25 two hundred and fourteen pages of e-mails in order to make

1 determinations as to whether there are appropriate
2 privilege and work-product objections. We don't want to
3 have to do that, so --

4 THE COURT: Let the ask you what privilege or
5 work-product objections would exist between a communication
6 between the law firm and third-parties?

7 MR. SCAROLA: The common interest privilege that
8 existed between the prosecution of the civil claims and the
9 criminal prosecution that was ongoing with regard to
10 Mr. Epstein. The common interest, the common interest
11 privilege could clearly cover both attorney-client
12 communications and work-product. So there is potential
13 privilege objections that need to be evaluated. There are
14 potential privilege objections that need to be evaluated.
15 But at this point there could be no possible relevancy as
16 to those communications.

17 MR. ACKERMAN: Your Honor, I think it's
18 important, first of all, if you have --

19 THE COURT: Let me stop. Somebody prepare an
20 order on the, what I just ruled. You don't have to write
21 out all the details but just --

22 MR. ACKERMAN: I will. Unless you want to do it?

23 MR. SCAROLA: No, that's quite all right.

24 THE COURT: All right.

25 MR. ACKERMAN: Your Honor, I think it's important

1 to address this now even though you've dismissed the
2 complaint because for these reasons, and let me show you.
3 If you can take that packet that I gave you, I can
4 demonstrate why this is relevant.

5 THE COURT: What packet?

6 MR. ACKERMAN: The packet of the documents that I
7 submitted to you --

8 THE COURT: Oh, okay.

9 MR. ACKERMAN: -- that Mr. Scarola is looking at.

10 THE COURT: Go ahead. I'm listening.

11 MR. ACKERMAN: Okay.

12 THE COURT: Although, I don't think I can get
13 this thing open, it's sealed. Do you have a letter opener
14 handy? Go ahead.

15 MR. ACKERMAN: Preliminary basis I think it is
16 unfair at this point to stop discovery while we amend the
17 pleading as it relates to this claim. We will be able to
18 prove and allege that Mr. Rothstein ran a Ponzi scheme.
19 The e-mails that I'm going to show you here are e-mails
20 that Mr. Rothstein sent to the investors using the Epstein
21 cases.

22 We have proved in deposition that the Epstein case
23 files that Mr. Edwards was prosecuting were shown to these
24 investors and their counsel. We can establish that the
25 investigators that were working on Mr. Edwards' case

1 against Mr. Epstein were showing the law firm's case files
2 to these investors. We can show, we can make an amendment
3 on the damages that will clear up the issues relating to
4 damages.

5 And I'm going to show the Court now the relevance of
6 why on the overall claims, so the Court doesn't delay the
7 discovery, but, specifically, the relevance with regard to
8 this request and the inability at this point to deal with
9 counsel's argument on a privilege.

10 If you look at, I think it's the first document,
11 01404. Okay. This is an e-mail from Russell Adler to Brad
12 Edwards copying Mr. Nurik and it relates to the
13 non-prosecution agreement, which is in our complaint.
14 Mr. Adler is saying to Mr. Edwards that he had a great
15 conversation with Mr. Nurik, who is another lawyer in the
16 firm, about the agreement and they wanted me to discuss the
17 possibilities. Now, this is an agreement that's already
18 been entered into by Mr. Epstein and the government.
19 Okay. That takes us out of the joint prosecution, joint
20 defense argument that Mr. Scarola made. That also refers to
21 the assets.

22 Okay. We go to the next one, 01661. This is from
23 Mr. Edwards to Mr. Adler dated July 18th, 2009, where
24 Mr. Edwards said to Mr. Adler. I want to talk to you about
25 a few things. If we make the right moves we may be able to

1 force Epstein to settle for a lot of money but we have a
2 couple of issues to deal with.

3 The next one, 05087, deals with Qtask and that is here
4 for two reasons. One, is to demonstrate to you why we
5 still need those records down the road. But also to show
6 how Mr. Edwards is using the media to feature the firm and
7 the Epstein case, which we believe was part of the Ponzi
8 scheme.

9 When you go to the next one, 07304, it's an e-mail
10 from Mr. Edwards to Mr. Kassel, who is another lawyer that
11 is representing some of the victims in the crime victims
12 rights act, where they say we have nothing more on moving
13 assets. And that's in the first part. And down below,
14 section three, he says I still think collection is going to
15 ultimately be the key issue and they have lack of proof of
16 transfer of assets. Now, in the federal court proceeding
17 they filed a pre-judgment motion to prevent the transfer
18 of assets, which was denied. And here they are
19 acknowledging potentially their lack of proof of being able
20 to do it.

21 The next one, 00158, is from Mr. Edwards to someone in
22 his firm directing her to send third-party subpoenas for
23 prescription records, which weren't at issue and which we
24 had placed in the complaint.

25 The next one is, 08412, is where Mr. Edwards is saying

1 to one of the secretaries requesting a meeting with Scott
2 at some point to discuss Epstein. Now, this is
3 particularly important now, and as I go through because
4 Mr. Edwards has testified in his deposition that he only
5 had a few, he had almost no conversations with
6 Mr. Epstein --

7 MR. KNIGHT: Mr. Rothstein.

8 MR. ACKERMAN: I'm sorry, Mr. Rothstein. Thank
9 you. Where an expletive deleted was used and claims
10 privilege on the other conversation.

11 So then we have 01685. I'm sorry, I skipped one. Do
12 you have the -- there is one from Cara Holmes, who is an ex
13 FBI agent that is saying to Mr. Edwards, let's go -- I
14 don't have it right in front of me because but you have it
15 right there.

16 THE COURT: I think our best bet is to go after
17 the close friends.

18 MR. ACKERMAN: Go after his friends. Which we
19 contend supports our abuse of process claim.

20 Then we go to 01685, which is Mr. Edwards to
21 Mr. Fiston, one of the investigators of Mr. Jenny, who he,
22 in his deposition, denies having this type of conduct with,
23 and talks about audio monitoring and recording in the law
24 firm. And that someone talking on the speaker phone can be
25 recording that. Now, we've alleged in the complaint that

1 Mr. Rothstein represented to these investors that he had
2 high-tech electronic surveillance equipment in order to
3 make this Ponzi scheme go.

4 With regard to this motion specifically, 05112,
5 Mr. Edwards is directing an e-mail to two investigators,
6 Mr. Jenny and Mr. Fiston and Mr. Roberts, is a third
7 investigator, and Cara Holmes, the lawyer we just
8 mentioned, speaking to the U.S. Attorney. She said if we
9 have proof of him being out of Florida, they will be in
10 violation of the agreement and she will prosecute him. Her
11 and the state attorney both called on probation. This is
12 why we want to get these records because we believe that
13 they were purposefully going out of their way in an effort
14 to revoke his probation and this was subsequently a portion
15 of something that was litigated before the federal court
16 and found not to be accurate.

17 05113 talks about serving Alan Dershowitz, which we
18 discussed earlier.

19 01406 is talking about taking Mr. Trump's deposition.
20 And we can put those matters into the complaint, as you
21 talked about earlier.

22 01212 is the proposed subpoena for Dershowitz. And
23 Alan Dershowitz was one of Mr. Epstein's criminal lawyers
24 in the criminal complaint, criminal cases, and they're
25 subpoenaing him for deposition in this case.

1 Now, 26477 is a memo from Ken Jenny to Scott Rothstein
2 advising him that the lawyers and investigators working on
3 the Epstein matter are meeting on the twelfth floor at two
4 p.m. to discuss where we are in the investigation. And
5 this is crucial for a number of reasons because it provides
6 one of the links, we believe, between Mr. Rothstein and Mr.
7 Edwards through these investigators where Mr. Scott
8 Rothstein is going to these meetings, learning what is
9 going on and this is the same time period where he is
10 pumping up his cases, these Epstein cases to these
11 investors, which we'll show in subsequent e-mails.

12 Okay. Now, we begin the e-mails that Rothstein,
13 Mr. Rothstein is sending to the various investors.
14 A. J. Discala is one of the investors. And then if you go
15 to 27303, Mr. Rothstein is sending out to Frank Priam who I
16 believe is one of the investigators, we have no money in
17 for this client. She left screaming. This is really bad.
18 We can lose the entire plaintiff's group, which we believe
19 related to Mr. Epstein's cases.

20 If you look at 04996, again we have another meeting
21 for Mr. Edwards to the number of people that were involved
22 to discuss this matter on October 22nd, 2009.

23 Mr. Rothstein in 26817 says I cannot have this blow-up
24 in my face. These clients talk to each other. If I burn
25 this client, I can end up losing all my clients in the

1 Epstein case. And this is occurring within the same day
2 that these people are meeting to discuss the case.

3 If you flip over to 26335, Mr. Rothstein is sending
4 the e-mail to A.J. Discala, Clockwork, an investor, Dean
5 Kretschmer, who I mentioned, and Frank Priam and at the
6 last sentence he states my client clearly feels I have lied
7 to her about her funding. She is one step away from going
8 to another lawyer and the Florida Bar.

9 The next one 02992, we have another meeting going to
10 all of these people in the law firm. Okay.

11 And then 27013 we have the documents of the Epstein
12 case that were in Mr. Rothstein's office.

13 So we have, contrary to what Mr. Edwards has testified
14 in the deposition, these documents establish that
15 Mr. Rothstein conducted the Ponzi scheme with investors for
16 the Epstein cases and unlike Mr. Edwards' testimony,
17 there's numerous meetings --

18 MR. SCAROLA: I'm sorry to interrupt, Your Honor,
19 but Mr. Edwards has never ever denied that Mr. Rothstein
20 was engaged in a Ponzi scheme. And to tell this Court that
21 he has testified in his deposition that that didn't occur,
22 that's just false. I don't know what this is all about but
23 what we're supposed to be talking about is whether the
24 documents that were subpoenaed with regard to the federal
25 government have anything to do with the pending

1 counterclaim and I haven't heard a word about that.

2 MR. ACKERMAN: Your Honor, I have --

3 THE COURT: Let's do kind of focus in on the
4 issue here.

5 MR. ACKERMAN: I will. The point of this was to
6 establish the parameter from which we made the request to
7 show the relevancy of it. The point I'm trying to make
8 with Mr. Edwards is that he testified there was a limited
9 number of people involved in the prosecution of this case
10 against Mr. Epstein when these documents clearly show that
11 that's not the case. So we have requested, because we
12 believe at the time they get the non-prosecution agreement
13 that deal is over with, there is no basis at all to assert
14 a joint privilege claim. Instead what it appears to be is
15 that they are looking to try and interfere with the
16 non-prosecution agreement. And so, we, because that part
17 of our theory of our case, if you go to the subpoena,
18 Exhibit 1, we have listed all e-mail communications between
19 the attorney and employee of this Rothstein firm, which
20 list these people, which we believe were involved with it
21 and we specifically list the U.S. Attorney, the State
22 Attorney, the Federal Bureau of Investigation, the Palm
23 Beach Police Department and any investigator working for
24 the state of Florida and anyone that represented an
25 individual with a claim. Now, if you go to --

1 THE COURT: Wait a minute. Where is the --

2 MR. ACKERMAN: If you go to my response.

3 THE COURT: I'm looking at your response. Okay.

4 MR. ACKERMAN: Okay. Under the one.

5 THE COURT: I got it. One.

6 MR. ACKERMAN: Next page Schedule A is the --

7 MR. KNIGHT: Let the judge catch up with you.

8 MR. ACKERMAN: I'm sorry. Schedule A has the
9 documents subpoenaed.

10 THE COURT: Okay. Go ahead.

11 MR. ACKERMAN: If you go to Exhibit 2 in response
12 to an e-mail from Mr. Litman, who is the attorney for the
13 bankruptcy trustee, we gave him the specific names for a
14 specific search for this subpoena. As you can see, there
15 are lawyers in the U.S. Attorney's office. There are
16 people in the Palm Beach Police Department. There are
17 people in the FBI. And there are people in the State
18 Attorney's Office. If you go to Exhibit 3, this is
19 Mr. Litman's response. He talks about refined e-mail
20 search, which sought documents reflecting the
21 communications between RRA lawyers and government
22 officials, which, if not all, are law enforcement officers.
23 He has a disc of those documents that are responsive and
24 that are Bates stamped.

25 THE COURT: Where is that?

1 MR. ACKERMAN: That's Exhibit 3 to my response.

2 THE COURT: Okay. Go ahead. Really, focus in on
3 the issue as to relevance, at this point and time.

4 MR. ACKERMAN: The relevance is, Your Honor,
5 first of all, we believe that part of this Ponzi scheme was
6 designed to do things to Mr. Epstein so that Mr. Rothstein
7 could tout those things to these investors to increase the
8 amount of money that they were investing. In our amended
9 complaint we went through the things that he told the
10 investors. That they had the eavesdropping equipment --

11 THE COURT: This is, this is the government.
12 This is the government, not the investors. It's not
13 communications with the investors. What are you, you
14 looking for any communications between U.S. Attorneys,
15 police and these people? How -- I mean.

16 MR. ACKERMAN: Because we believe there was an
17 effort to torpedo this non-prosecution agreement. We
18 believe that they were taking steps to cause a breach or
19 get the government to revoke it after Mr. Epstein had
20 agreed to it. We believe that that is an abuse of process.
21 Subpoenas in those civil cases --

22 THE COURT: Let me get this straight. Are you
23 saying that an alleged victim of a crime has no right to be
24 involved in or to petition the government or even to
25 suggest to the state attorney or anybody else that what

1 they're doing is contrary to their interest and get it
2 revoked, you think that is an abuse of process?

3 MR. ACKERMAN: When the agreement has already
4 been made. Okay. Your Honor, and this is, this was an
5 agreement that was reached. Okay. And they're attempting
6 to undermine the agreement.

7 THE COURT: I'm having trouble here. You're
8 telling me or you're suggesting that a victim cannot go to
9 the government, even after a reached agreement and say, you
10 know, this is bad. I didn't have the input put into it or
11 whatever the reason they think it shouldn't be existing, I
12 mean, isn't that --

13 MR. ACKERMAN: Your Honor, first of all --

14 THE COURT: You think that's an abuse of process?

15 MR. ACKERMAN: We're not talking the victims.
16 We're talking about RRA doing this. And not only that, we
17 won't know until we get them to see whether they're related
18 to the victim or related to this case. You don't have to
19 do an in camera review. We can look at the documents and
20 determine whether they relate to a victim. They're still
21 not privileged. They're going to third-parties. We don't
22 have a privilege issue here. If he is advocating a case on
23 behalf of his victims, there is no privilege. He's
24 potentially in an adversary situation and there is a
25 present adversary proceeding involving this crime, which I

1 have placed in this complaint. But if he is advocating
2 that, then there is no privilege and we should be able to
3 look at those documents to see if, in fact, that's what
4 they were doing or they were using it based on what I've
5 given you to show that they were really trying to, to
6 effectuate this Ponzi scheme.

7 THE COURT: These are relevant to show what
8 again? I'm really -- I'm sorry, I'm dense but --

9 MR. ACKERMAN: Your Honor, we believe that
10 Mr. Rothstein, and we believe Mr. Edwards participated in
11 this, undertook a number of things in the Epstein lawsuits
12 that would assist them with the marketing of this
13 investment.

14 One of the things we believe they did was to proceed
15 to interfere -- to proceed to destroy this non-prosecution
16 agreement that had already been reached between the
17 government and between Mr. Epstein. We believe that they
18 undertook surveillance, for example, in order to effectuate
19 that. We believe that had nothing to do with these cases
20 that they were prosecuting against Mr. Epstein on these
21 three people. We believe it was a concerted effort to
22 attempt to have Mr. Epstein's probation violated. And if
23 you look at the privilege log, there is a designation
24 between Paul Kassel and Mr. Edwards relating to violating
25 his probation.

1 THE COURT: Is there already a privilege log
2 regarding these? There is not, right.

3 MR. ACKERMAN: There is a privilege log that just
4 describes the subject matter of that communication. It
5 does not relate to this document because the privilege log
6 was not prepared with the documents we're talking about.

7 THE COURT: Okay. So we don't have a privilege
8 log?

9 MR. ACKERMAN: Not related to these.

10 THE COURT: Okay. I understand. Yes, sir.

11 MR. SCAROLA: It is extremely frustrating to have
12 counsel repeatedly talk about what he believes when his
13 beliefs are neither relevant, nor, based upon facts and,
14 indeed, are directly contrary to the facts.

15 The crime victims right act complaint filed by
16 Mr. Edwards was filed by Mr. Edwards before Mr. Edwards
17 ever had any association whatsoever with RRA and before he
18 ever filed any civil action on behalf of his clients
19 because his client victims were upset about the sweetheart
20 deal that Mr. Epstein had gotten, he had every right, he,
21 Mr. Edwards, had every right and, indeed, a responsibility
22 to his clients to vigorously petition the government for
23 the redress of what they perceived to be a serious
24 grievance.

25 To compound all of this, there is no complaint that is

1 presently pending. And when counsel repeatedly talks about
2 interference with the non-prosecution agreement is part of
3 the theory of our case, there is no case right now. They
4 haven't stated a claim. And the only claim they attempted
5 to state was an abuse of process claim, which has got
6 nothing to do with tortious interference with a
7 non-prosecution agreement.

8 They, when repeatedly given an opportunity to relate
9 this requested discovery to an effort to obtain evidence
10 reasonably calculated to relate to the pending
11 counterclaim, are unable to do it because it can't be done.

12 Your Honor, respectfully, should grant our motion for
13 a protective order. And if after they have decided what it
14 is they want to try to sue Mr. Edwards for, they have
15 restated another claim and they believe that evidence in
16 the hands of the trustee with regard to communications
17 between RRA attorneys and government officials and law
18 enforcement officers is relevant and material to whatever
19 new fabricated claim they attempt to state, we can come
20 back before Your Honor and address it in that context.

21 Thank you, sir.

22 MR. ACKERMAN: Your Honor, may I give a brief
23 response?

24 THE COURT: Briefly, yes, sir.

25 MR. ACKERMAN: Again, when I went through these

1 documents I'm trying to give the Court where our inferences
2 can be that can lead to discoverable information, okay.
3 And I think for the Court to postpone this until we have an
4 amended complaint when we have this information in front of
5 us, which we believe shows a link to a set of patterns
6 where they are talking about the non-prosecution agreement,
7 where they're going after his friends, where there are
8 numerous meetings with the whole firm at the time this
9 investment is being made, that that shows a plan and why
10 this is relevant. And if the victims are adverse to the
11 government, then they don't have a joint privilege. And I
12 submit to you that these are relevant for what our ultimate
13 theory of the case is going to be, which you can see, and
14 what these documents that we have right here demonstrate.

15 THE COURT: Okay. What is the next one? All of
16 these orders will be out by Friday, gentlemen, because I'm
17 going -- actually be out by tomorrow. So go ahead, what is
18 the next one?

19 MR. ACKERMAN: Okay. Your Honor, I would like,
20 this one, Three D involves an amended supplemental motion
21 based on, and to be able to compel Mr. Edwards to answer
22 questions at a deposition. One of the things, since we
23 have a number of issues relating to privilege, that there's
24 one thing that I would like to address in this deposition
25 because it deals with a request to produce on another

1 motion that relates to damages, okay. If the Court can
2 turn to Three C, Three D. And I'm trying to save
3 some time.

4 MR. SCAROLA: May I make a suggestion to save
5 some time? Mr. Edwards has been deposed extensively
6 already. If there is any, any circumstance under which
7 he's going to be deposed again, it, certainly, ought to
8 come after he knows what the charges are against him and
9 not before.

10 MR. ACKERMAN: With one exception, and the reason
11 I'm asking now are the damages in their counterclaim. Okay.
12 The damages in their counterclaim, he was asked
13 extensively --

14 THE COURT: What are you asking me to do? Are
15 you asking me to redepose him on this one question?

16 MR. ACKERMAN: I'm willing to defer the
17 deposition on this one issue to a time where it makes sense
18 to address other issues. But I don't want this objection
19 that he's made in the deposition to keep me, keep us from
20 getting the information for his damages in the
21 counterclaim, which we have not received and is a subject
22 for another motion. They raised objections as to how much
23 you were making. We asked him -- let me back up. If you
24 go --

25 THE COURT: If this is a production request, that

1 is the request what we're dealing with. I mean, seems
2 nonsensical for me to decide questions in the deposition at
3 this point until we know exactly who is suing who for what
4 and then you can get them altogether at one time.

5 MR. ACKERMAN: I can. The only reason I'm
6 bringing it up is in the deposition we attempted to make an
7 inquiry on financial parts that we believed were relevant
8 to defending the counterclaim and he raised an objection of
9 economic privacy. That is also raised in our request to
10 produce.

11 THE COURT: You can still do a request to
12 produce, if that's what you want to do. I don't think we
13 deal with it at the deposition stage.

14 MR. ACKERMAN: So just defer this motion?

15 THE COURT: I'm not going to, seems silly to me
16 to order, unless you want him to, just to answer it by, if
17 I grant it, answer it by way of interrogatory. I don't
18 think you are going to like that.

19 MR. ACKERMAN: Well, at some point we need to
20 redepose him on the damages.

21 THE COURT: My point being is if you're not going
22 to accept an answer by way of interrogatories, then you're
23 going to have to redepose him anyway. We're not going to
24 do this today. Not that. It don't make any sense.

25 MR. ACKERMAN: Okay. We'll defer and go to the

1 request to produce.

2 THE COURT: Which one is that?

3 MR. ACKERMAN: Okay. Four A. That also
4 involves another issue. To simplify things at this
5 point --

6 THE COURT: Four.

7 MR. ACKERMAN: We sent a request to produce.
8 It's attached to the motion Exhibit 1.

9 THE COURT: Again, you're dealing with privilege
10 issues here, as well as other stuff, right?

11 MR. ACKERMAN: Well, there are a number of
12 objections here that don't raise privilege. Okay. We
13 asked for, I believe, if you go to Paragraph Five of the
14 motion refers to Paragraph Six of the request where we
15 requested fee sharing agreements relating to the case. He
16 has a counterclaim that seeks damages for, among other
17 things, his reputation, interference with professional
18 relationship, loss of value of time, required to be
19 diverted from his professional responsibilities. So we
20 believe the compensation relationship between Mr. Edwards
21 and RRA and anything related to the Epstein cases should
22 been produced. His objection to this number six says
23 relevance, not reasonably calculated to lead to
24 discoverable information, and there are no agreements with
25 investors. But we were not asking for investor agreements.

1 We wanted the agreements between Mr. Edwards, RRA, and
2 Rothstein.

3 THE COURT: It does ask for investor.

4 MR. ACKERMAN: Pardon me?

5 THE COURT: It says or investor.

6 MR. ACKERMAN: Okay.

7 THE COURT: And/or any other attorney or investor
8 related to any aspect of any plaintiff's case. Not just --

9 MR. ACKERMAN: Right. So he says that he doesn't
10 have the investor ones but he hasn't produced the ones
11 between Edwards, RRA and Scott Rothstein.

12 THE COURT: Okay.

13 MR. ACKERMAN: Number nine, we ask for cost of
14 payment that the Rothstein firm had against Mr. Edwards.
15 There's no privilege claim there. Pardon?

16 MR. KNIGHT: Against Mr. Epstein.

17 MR. ACKERMAN: Against Mr. Epstein. I'm sorry,
18 Your Honor. Okay. We felt that that was related to how
19 the cases were being used. We believe that this Ponzi
20 scheme was designed to raise money to fund these cases.

21 Number ten, we ask for the documents received by you
22 relating to the assertion of a lien by the trustee. Okay.
23 Because that relates to his compensation on the Epstein
24 cases, which is part of the damages of his counterclaim.
25 Because in order to find out what he's been damaged, we

1 need to know what he was making at the firm at the time and
2 how the compensation formula was set up and what he earned
3 on the various cases.

4 Number 22 is all documents that support your claim for
5 damages. Okay. There is an objection to that that it's
6 not determined. They can't formulate. He says they don't
7 know what the damages are. Okay. So we need to get that
8 information.

9 THE COURT: Okay. Yes, sir.

10 MR. SCAROLA: Not yet determined is not an
11 objection, it is an answer. The only argument that was
12 made that relates to relevance to the pending counterclaim
13 is evidence with regard to damages claimed by Mr. Edwards.
14 Mr. Edwards is not claiming that he lost any income from
15 RRA. RRA has folded. It went into bankruptcy. It folded
16 and went into bankruptcy as a consequence of
17 Mr. Rothstein's criminal activity. We do not blame
18 Mr. Epstein for the destruction of the law firm and any
19 economic loss that resulted as a consequence of the
20 destruction of the law firm to Mr. Edwards. Therefore,
21 that line of inquiry is irrelevant and immaterial.

22 What we have alleged is that Mr. Edwards has been, and
23 continues to be, diverted from other income producing
24 activity as a consequence of the prosecution of these
25 spurious claims, whatever they may ultimately wind up

1 being, but what they have been up until now, as well,
2 including the need to defend against Florida RICCO claims
3 that no longer exist, and civil remedies for criminal
4 activity claims that no longer exist against him, that his
5 attention was diverted from other income producing
6 activities as a consequence of the need to defend against
7 this case. That's got nothing to do with how much money he
8 made historically, if anything, from RRA.

9 MR. ACKERMAN: Your Honor.

10 THE COURT: What about the idea that past
11 performance is a predictor of future performance in terms
12 of --

13 MR. SCAROLA: We're talking about the lost value
14 of the time, that's what we're talking about.

15 THE COURT: I understand that. But how do we
16 measure his time?

17 MR. SCAROLA: Because he's got a standard hourly
18 rate.

19 THE COURT: Okay. But, I mean, it's like
20 somebody saying, well, I can no longer detail cars and I
21 make X amount of dollars detailing cars but you've been
22 doing that work for twenty years, can't you find out what
23 you did before.

24 MR. SCAROLA: Well, I don't think that's an
25 accurate analogy. In the case of an attorney, as I think

1 it was Abraham Lincoln observed, what we have to sell is
2 our time. And there is only a finite amount of that time.
3 Regardless of what Brad Edwards may have made from other
4 sources historically or prospectively what he may make in
5 the future, he lost time that could have been devoted to
6 other income producing activity. What probative value does
7 it have to know, for example, that in 2010 Brad Edwards
8 made \$5,000 and in 2011 Brad Edwards made \$20,000, if Brad
9 Edwards could have made \$25,000 in 2011, if he wasn't
10 obliged in 2011 to be sitting in this courtroom all day
11 today as a consequence of having been sued for purposes of
12 putting him in this courtroom instead of enabling him to
13 make a living.

14 So I don't know how you draw any reasonable inference
15 from that other information. Would it be relevant to know
16 what his standard hourly rate is, yes. Would it be
17 relevant to know how much time he has had to devote to this
18 case, those would be relevant and material inquiries. But
19 how much he made from other sources is so dependant upon
20 factors that are entirely independant of the damages
21 claimed in this case, that they have no relevance and
22 materiality. And, certainly, in conducting a balancing
23 test, when they don't have probative value and we weigh
24 against the absence of probative value the invasion into
25 his economic privacy, I suggest to Your Honor that the

1 outcome of that balancing test ought to be, I'm sorry, you
2 don't get it at this point. There just isn't enough here
3 for you to get it on the basis that he has told you that
4 what he has lost is his time and the value of his time.

5 MR. ACKERMAN: May I respond?

6 THE COURT: Yes, sir, just one second. But if he
7 couldn't sell his time before, I mean, like you say, I just
8 keep getting back to the fact that if his time was not
9 productive or he couldn't sell his time before, I don't
10 know what he made with this law firm. It may have been a
11 lot of money, it may have been nothing. I don't know. How
12 could we say that's not, at least, calculated to lead to
13 admissible evidence in this case as compared to what the
14 potential value may be.

15 MR. SCAROLA: That, Your Honor, would be a
16 relevant question. His ability to productively use his
17 time in the past would be relevant. But Brad is primarily
18 a plaintiff's lawyer. That's principally the work that he
19 does and has been doing. Your Honor knows that this year's
20 productivity is a consequence, or potentially a
21 consequence, of effort that was made and begun five years
22 earlier.

23 THE COURT: Let me suggest to you, I've had cases
24 where the plaintiff in a personal injury case was a
25 practicing attorney. And they claim as a result of the

1 injuries sustained in the accident they're unable to work
2 like they were and, therefore, have lost earnings or
3 ability to earn money in the future as a result of the
4 physical limitations, injury or whatever it is. I can't
5 imagine in that kind of case the attorney could come and
6 say, well, you can't find out what I made before this
7 injury because that's not relevant to what my time is worth
8 today.

9 MR. SCAROLA: I absolutely agree with you. In
10 that kind of case, I think that, I think it is a relevant
11 and material inquiry. But let's assume those same set of
12 circumstances and the attorney says I was, as a consequence
13 of my injury -- I'm a lawyer who works on an hourly basis
14 and as a consequence of my injury I missed two weeks of
15 work. Or I work on a salary and I missed two weeks of work
16 and this is how much I get paid and I didn't get paid for
17 that two week period of time. All you get --

18 MR. ACKERMAN: Your Honor.

19 THE COURT: Wait a minute.

20 MR. SCAROLA: All you get in terms of discovery
21 is what you need to know for what the value of that time
22 was. That's all you get. And you don't get to know what
23 he was making five years earlier at a different law firm or
24 what he may be making today because that's not relevant to
25 the loss that he had during that limited period of time.

1 And that's what we're saying, what Brad Edwards has lost is
2 the value of that time that has to have been devoted to
3 this case as a consequence of his having been the victim of
4 an abusive process.

5 MR. ACKERMAN: Your Honor, I've attached the
6 interrogatory answers. We've asked him what the amount of
7 the damages alleged to be, it's in excess of one million.
8 They have said emotional distress, mental anguish, which
9 I'm not sure is a claim that can be brought. But he's
10 asked for loss of reputation and standing in the community.
11 Loss of value of time spent in defense and in responding to
12 this process. In the counterclaim he talks about damages
13 to his reputation, interference with professional
14 relationships, loss of a value of time. We can't begin to
15 make that evaluation for the amount of money that's claimed
16 without being able to look into what relationships he had,
17 what fee agreements he had, what money he made so that we
18 can determine whether, in fact, he has been damaged by this
19 or by something else that's happened in his life. And one
20 of the ways we can do it is by looking at what his
21 compensation plan was. What agreements he had with the
22 firm. What he had with referral lawyers so we can
23 establish whether there has been, in fact, an interference
24 with these professional relationships and find some way to
25 get to this million dollars which they are claiming and

1 that we now have to defend. So it is relevant and likely
2 to lead to relevant information.

3 THE COURT: Okay. What about the -- I don't know
4 if you mentioned this, Mr. Scarola, the documents
5 evidencing cost and payments of bills and the trustee lien
6 for attorney's fees and costs?

7 MR. SCAROLA: Couldn't have any relevancy at all
8 to the pending counterclaim and there is no pending claim.

9 THE COURT: Okay.

10 MR. ACKERMAN: Your Honor, that goes to, what,
11 ultimately, there is going to be a number of factors that
12 make up what Edwards' salary was and what he made and where
13 it came from. Okay. And if he didn't actually net money
14 from the cases but it had to go to the trustee, that may
15 affect the calculation and the number. And what we're
16 trying to do is make a determination as to the overall
17 impact on his ability to earn money and anything that
18 relates to what the fee is, what the costs were, or
19 affected his income and his relationships is relevant.

20 THE COURT: Okay. What is next? I'll tell you
21 what, I'm going to have to take a short break. You can
22 stretch your legs, as well. Tell me which one is the next
23 one.

24 MR. ACKERMAN: Hold on a second, Your Honor. I
25 guess the next one would be the protective order relating

1 to the deposition of the plaintiff and a motion to compel
2 relating to the plaintiff. And then we have some
3 objections to request to produce that each has lodged
4 against the others.

5 MR. SCAROLA: We don't want to redepose
6 Mr. Epstein until after the new complaint is filed. That
7 can be deferred.

8 THE COURT: Okay. So which motion you want to
9 hear next?

10 MR. ACKERMAN: Hold on a second.

11 THE COURT: You all figure it out and I'll be
12 back in a few minutes.

13 MR. SCAROLA: Thank you, sir.

14 (BREAK TAKEN)

15 THE COURT: Thank you. I wasn't back there
16 twiddling my thumbs. Unfortunately -- not unfortunately.
17 Fortunately, I'm going on vacation Friday to see my
18 grandchildren. And needless to say it always happens,
19 there is all of these emergency motions that are filed that
20 have to be ruled on by Friday so I was dealing with one of
21 our laws clerks on issues I've never heard before in my
22 thirty-five years practicing law.

23 MR. SCAROLA: Law clerk?

24 THE COURT: We have law clerks. We have to share
25 the law clerks but we have law clerks. Okay. Which one we

1 doing now?

2 MR. SCAROLA: Three G.

3 THE COURT: Three G. Okay.

4 MR. ACKERMAN: It's really in relation to Three G
5 and H.

6 THE COURT: Okay.

7 MR. ACKERMAN: Okay. If I could also ask the
8 Court to flip over to J. Just keep your finger there. We
9 filed -- basically, what had occurred, is that Mr. Scarola
10 re-noticed Mr. Epstein for deposition, for video deposition
11 on April 13 of this past year. Now, I communicated with
12 Mr. Scarola to find out what the nature of the deposition
13 was going to be about since he had testified extensively
14 already in deposition. Mr. Scarola's response was that he
15 was going to go into inquiry relating to public statements
16 made by the plaintiff regarding his criminal activity, any
17 documents supporting -- he was going to take the position
18 that the plaintiff had waived his Fifth Amendment right.
19 He had taken the position that he had lost his Fifth
20 Amendment rights by operation of law and that was the basis
21 of the deposition. So I sent a request to produce out,
22 which is in J, based on that and received objections to all
23 of those matters. So we filed a motion for protective
24 order based on the grounds that he had already been
25 deposed. That no meaningful grounds had been alleged to

1 justify taking another deposition. Particularly, on the
2 grounds that he had waived his Fifth Amendment and we had
3 sought the discovery to find, understand the basis of that
4 so we could understand why we were being, my client was
5 being deposed again. And we had also requested in this
6 motion that it not be a video deposition. And the reason
7 why we were requesting that it not be a video deposition is
8 particularly meaningful in light of the discovery request
9 that this Court is about to rule on where he may be asked
10 several questions of a specific sexual nature that then are
11 placed on videotape on and then goes into the public domain
12 and the prejudice to that is incredible and should not be
13 allowed. So we filed this motion. We advised counsel that
14 unless, we had to have a hearing on this, and that before
15 he could be redeposed on this new information we needed a
16 hearing. So we advised him in advance. Mr. Epstein, we
17 also, I think, had a problem with a date but he did not
18 appear for the deposition so Mr. Scarola has filed a motion
19 to compel and for sanctions not to appear.

20 And so our position, basically, is that the grounds
21 that he sought to depose him on that we were advised was
22 not appropriate. And that we did not, particularly, we had
23 a good faith concern, in light of the discovery that he was
24 attempting to take, of the vast information into prior
25 sexual issues, that those become, be placed on a video

1 deposition and then become something in the public domain.

2 THE COURT: Are you asking me to prohibit the
3 deposition, prohibit the video deposition or prohibit or
4 require him to produce the documents? I'm not sure. Or
5 all of the above?

6 MR. ACKERMAN: If he's going to depose him on the
7 Fifth Amendment, I want the documents that allege that that
8 was, that that was done. I think that's a reasonable
9 request. It's a subject that he's claimed numerous times
10 that that has occurred. And before any deposition occurs
11 on that we want the documents that establish that.

12 Secondly, we felt that he should not be deposed on
13 that, on that issue because all it would do -- I mean, he
14 had already been extensively deposed. And he, Mr. Scarola,
15 needs to come in and establish why he wanted to take his
16 deposition again and that's not in his motion to compel for
17 sanctions. And that needs to be presented to the Court and
18 approved before any sanctions or order compelling is set
19 forth.

20 And third, I can't, the rules allow a video deposition
21 but the Court can make restrictions on how it's used.
22 And our concern in this case, as I articulated before, that
23 if we end up going down this rabbit trail of this, the type
24 of discovery that they have asked for, the sexual nature,
25 and then that is on a video deposition and it can then be

1 placed on the Internet, we need to have a hearing on that
2 so that the Court can place some restriction on the use of
3 that so there is no unfair prejudice and we can't do that
4 at this point in time. So that was the basis of the
5 motion.

6 THE COURT: Yes, sir.

7 MR. SCAROLA: This was a dually noticed video
8 deposition. Counsel has acknowledged the fact that there
9 were communications about the scheduling of this deposition
10 and what we intended to do. While a motion for protective
11 order was filed on April 8 of 2011, no effort was ever made
12 by the plaintiff to set the motion for protective order for
13 hearing. They just unilaterally chose not to show up.
14 There's a certificate of non-appearance. We had a court
15 reporter present we were there. We were ready to proceed
16 and they simply did not appear.

17 Mr. Epstein has made numerous public statements to
18 reporters. And his denials about having engaged in
19 misconduct with minors have been reported. I want to ask
20 him about those public statements that he has made.
21 I want to know whether the reports of those public
22 statements are accurate or not accurate. I want to know
23 what the denials are based upon. I want to know whether he
24 admits having spoken to these reporters or denies having
25 spoken to them at all. All for purposes of determining

1 whether there, in fact, has been a waiver of his Fifth
2 Amendment right to remain silent. Because he cannot choose
3 to remain silent when he is deposed but speak to every
4 court reporter who he can get in front of to tell them this
5 is all silly because I really didn't do anything wrong.

6 THE COURT: You said court reporter, I don't
7 think you meant.

8 MR. SCAROLA: I meant reporter, not court
9 reporter, you are correct, Your Honor. There is,
10 obviously, significant evidentiary value to having these
11 depositions recorded on video for purposes of later
12 presentation before a jury. The Florida Rules of Civil
13 Procedure recognize that value. And the concerns that
14 Mr. Ackerman has, if they need to be addressed at all,
15 certainly, don't need to be addressed by a prohibition of
16 the videotaping of the deposition, which while he
17 appears to be backing off from that now, is what his motion
18 asked for.

19 We are entitled to take a video deposition. As I've
20 told Your Honor, I don't want to do it until after I know
21 what the new allegations are in the new complaint. We
22 didn't have a new complaint as of the time of this request
23 for deposition but I do now want to delay it until such
24 time as the video deposition can be taken to cover all of
25 the issues that are raised in the new complaint.

1 But I do want to be able to video it when we take the
2 deposition.

3 THE COURT: Well, I'm not going to rule on when
4 you have to take the deposition. If I allow it, I'm just
5 going to rule as to whether or not you're allowed to take
6 the deposition --

7 MR. ACKERMAN: Your Honor, may I respond?

8 THE COURT: -- in the areas we're talking about.
9 Second, whether or not you have to produce the documents
10 you have requested.

11 MR. SCAROLA: Let me address that, Your Honor.

12 THE COURT: And third, whether or not it can be
13 by video and, if so, what restrictions I put on any video
14 that's done.

15 MR. SCAROLA: Had this deposition gone forward,
16 as it should have gone forward on April 13, I obviously
17 would not have been obliged to respond to a request to
18 produce in advance of that deposition. And the selection
19 of particular documents for use during the course of the
20 deposition is attorney work-product. I ought not to have
21 to give this party a script of what he is going to be asked
22 about in advance. I don't think I'm obliged to do that.
23 Obviously, I'm not obliged to absent an order of the court,
24 and if the Court did order me to do it, I would do it. But
25 I don't think that I should have to give them a script of

1 what I'm going to be asking about in advance and that's,
2 basically, what they're asking for.

3 MR. ACKERMAN: Couple of things, Your Honor.
4 This motion was filed at the time you were basically saying
5 I need to have an all day hearing and we're going to defer
6 any ruling on discovery and stuff until you get your hands
7 around this case. And so based on the statements the Court
8 made it was set for today and it would have been set in
9 May, if we had reached it in May, but that's why it wasn't
10 noticed because it was my understanding that you were going
11 to, you needed to understand what the issues were before
12 you could --

13 THE COURT: Let's just deal with the subject of
14 aspect not the procedural.

15 MR. ACKERMAN: Okay. Secondly, Mr. Scarola
16 hasn't shown why he needs to be deposed again. He hasn't
17 shown why these matters weren't addressed in the previous
18 deposition. Okay. He has already been extensively deposed
19 already and he hasn't met his burden to show that he's
20 entitled to be deposed again on these issues, at least
21 until --

22 THE COURT: I understand the rule to be the
23 opposite of what you just said. I understand the rule to
24 not limit the type, scope of discovery unless it's shown
25 that it's oppressive, burdensome. And that becomes your

1 burden, as I understand it, the way the rule reads.

2 MR. ACKERMAN: I don't believe that's the case,
3 Your Honor.

4 THE COURT: I thought it states it doesn't limit
5 it unless --

6 MR. ACKERMAN: But the case law does allow
7 protection --

8 THE COURT: True.

9 MR. ACKERMAN: -- to a party that's already been
10 deposed.

11 THE COURT: I agree.

12 MR. ACKERMAN: And that's my point. He's already
13 been extensively deposed.

14 THE COURT: But, I guess what I'm saying, maybe
15 I'm saying the same thing by different, different wording.

16 MR. SCAROLA: What has repeatedly been referred
17 to as an extensive deposition is a series of Mr. Epstein
18 reciting a script provided to him by counsel about how he
19 is asserting his Fifth Amendment privilege even though he
20 would like to be able to answer my questions, but his
21 lawyer has instructed him not to answer my questions and so
22 I'm not going to answer your questions and it goes on for
23 about three paragraphs.

24 MR. ACKERMAN: Your Honor.

25 MR. SCAROLA: And it's the same response we got

1 over and over and over again.

2 MR. ACKERMAN: Your Honor.

3 MR. SCAROLA: It was not an extensive deposition
4 as to the merits of this case. And I have clearly stated
5 why I need to redepose him because I believe he has now
6 waived his right to Fifth Amendment privilege and I want to
7 explore the basis for making that claim. And in addition
8 to which he will have made new assertions for new
9 affirmative relief at some point between now and thirty
10 days from now and I want to ask him a lot of questions
11 about every claim for affirmative relief he's making.

12 MR. ACKERMAN: Your Honor, we keep going back to
13 this. If you look at Mr. Epstein's deposition, when he's
14 asked questions about the abuse, what I'm going to call the
15 abuse of process case, he answers those. What he has taken
16 the Fifth Amendment on are all of these sexual matters,
17 which we have contended have no bearing on this case.

18 THE COURT: We're not dealing with that right
19 now. We're dealing with the questions that he wants to ask
20 him with regard to the fact that he may or may not have
21 waived his Fifth Amendment privilege just by making public
22 statements or discussing it with third-parties. That's --

23 MR. ACKERMAN: Then I think, then I think he
24 needs to come to this Court and produce the documents to
25 show that that has been waived before we have to undergo a

1 deposition about it. He had the opportunity to do it. He
2 hasn't shown that he could have or would have been able to
3 do it before. And at this point in time we've made a
4 request for it. And the Court, I believe, in order to
5 properly protect the parties from someone that's already
6 been deposed is to determine whether, in fact, there is a
7 prima facie basis for a waiver, otherwise, we're going to
8 be arguing about it in the deposition.

9 THE COURT: See, here's part of the rule I'm
10 talking about. It says unless the Court orders otherwise
11 and under subdivision C, which is protecting you against
12 oppressive, et cetera, et cetera. The frequency and use of
13 these is not limited. I always understood you could take
14 deposition as long as you are not abusing the system or
15 otherwise subject to protective order because you're
16 harassing, whatever the rules says here. I can get you the
17 exact words.

18 MR. ACKERMAN: But there is the case law that the
19 Court is aware of where if the party has already been
20 deposed they have to come -- a party seeking to redepose
21 him has to show the basis. Now, he's --

22 THE COURT: You got a case that says that?

23 MR. ACKERMAN: I don't have it with me, Your
24 Honor. I'm relying on my memory.

25 THE COURT: I think that's an overstatement of

1 what these cases say. I think they say you can protect
2 somebody against burdensome, harassment, oppressive,
3 repetitive discovery. I don't see it says that you can't
4 take more than one deposition. You can take five
5 depositions if you're not going over the line. But, you
6 know, certainly, if you want to give me a case that says
7 that. Okay. Guys, that's going to have to be it because
8 I, unfortunately, have to do a couple of orders back there
9 that I got that man working on. I'll get these orders out
10 by tomorrow for you. And then what I want you to do is
11 contact my JA and I would hope, what I would like to do,
12 and I know you all don't want to do it this way
13 necessarily. I want to get a complaint out there that
14 withstands the motion to dismiss before we go into all
15 these privilege things. I just want to be able to know
16 what the heck we're talking about and what the lawsuit is
17 about. Because some of the things you've alleged in my
18 view in the complaint at present may not fall within the
19 area of abuse of process unless can you show me otherwise.

20 MR. ACKERMAN: What I would like to do, Your
21 Honor, because I know the time is late, I would like before
22 our complaint is due, to have a fifteen minute hearing, I
23 don't think it will take longer than that, where I can put
24 to the Court one area where I believe the privilege issue
25 has been waived, and, that is, those documents that we are

1 arguing about here have been produced to a third-party.
2 And I believe that that would then allow us to get the
3 documents that are subject to the privilege and we can use
4 that to prepare our complaint. The Court denies it, we
5 still are on track. But it's very important because they
6 have maintained. We have had six or seven months of
7 litigation over these issues over privilege. You issue a
8 stay to us that we can't go subpoena the trustee and then
9 when they are faced with the choice of having to deal with
10 it in the bankruptcy court they turn over the records that
11 we are under confidentiality agreement with to a
12 third-party without that confidentiality.

13 THE COURT: Set your fifteen minute motion and
14 I'll listen to that. But, otherwise, I want the other
15 thing set, as well. Get some time so we can go through
16 this stuff, okay.

17 MR. SCAROLA: And that is not, that is not
18 delaying the thirty day period that they have to file their
19 new complaint; is that correct, Your Honor?

20 THE COURT: No.

21 MR. ACKERMAN: I'm just asking it be done before
22 the thirty days so I have an opportunity to, if you agree
23 with me, to get those documents.

24 THE COURT: You will prepare the orders on the
25 motion to dismiss, on the motion for punitive damages, and

1 on the issue about the pre-trial gag order.

2 MR. ACKERMAN: Yes.

3 THE COURT: I'll do the rest of these.

4 MR. KNIGHT: Enjoy your vacation. Sounds like
5 you need it.

6 THE COURT: Well, yeah. Thank you.

7 (Court adjourned 4:45 p.m.)

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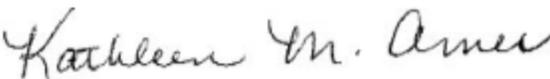
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1 CERTIFICATE

2
3 I, Kathleen M. Ames, RPR, Notary Public, State of
4 Florida, was authorized to and did stenographically report
5 the foregoing proceedings; and that the transcript, pages 3
6 through 157, is a true and accurate record of my
7 stenographic notes.

8 I further certify that I am not a relative, or
9 employee, or attorney, or counsel of any of the parties'
10 attorney or counsel connected with the action, nor am I
11 financially interested in this action.

12
13 Dated this 15th day of July, 2011.

14
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16 

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18 _____
19 KATHLEEN M. AMES, RPR
20
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