

JEFFREY EPSTEIN,

Plaintiff/Counter-Defendant,

vs.

SCOTT ROTHSTEIN, individually, and
BRADLEY J. EDWARDS, individually,

Defendants/Counter-Plaintiffs.

TRANSCRIPT OF HEARING
Volume 1 of 1
Pages 1 - 19

DATE: Monday, June 5, 2013
TIME: 8:55 o'clock, a.m.
PLACE: Palm Beach County Courthouse
205 North Dixie Highway
West Palm Beach, Florida 33401
BEFORE: Honorable David Crow,
Circuit Court Judge

This cause came on to be heard at the time
and place aforesaid. The following proceedings
were reported by:

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BY: JACK SCAROLA, ESQ.

The above-styled cause came on for
hearing before the Honorable David Crow,
Circuit County Court Judge, at the Palm Beach
County Courthouse, 205 North Dixie Highway,
West Palm Beach, Florida, on June 5, 2013,
commencing at 8:55 o'clock, p.m., as follows:

THE COURT: Good morning. This is
Epstein versus Rothstein. Actually, this is a
status conference, as well as I think the
plaintiff filed a motion for clarification. I
read the motion. Do you want to add anything
else to the written motion?

MS. COLEMAN: No, Judge. I brought all
the case law with me, but I attached your
previous March 11th order, as well as the
subsequent May 17th order, which was the
portion with which we took issue for the
clarification.

THE COURT: I am not sure what the
clarification is. Let me just say I thought
the order was clear. Here's what it said.

It said very simply that I initially
ordered you to produce a privilege log for
anything that was an non-constitutional
privilege and you do not have to provide a

privilege log which in and of itself may be
incriminating. I understood that that was
your position.

I expected there would be a list of
documents, which only was an objection based
on some non-constitutional privilege. What I
got, what was provided, was essentially,
although you did produce some documents,
substantially all the documents were objected
to not only on the Fifth Amendment privilege
but also on the basis of work product,
attorney/client privilege and various other
non-constitutional privileges.

We had a hearing on that, and I think I
asked counsel what do I do under these
circumstances, and I don't recall the direct
response, but it was not a lot of information
I got from you.

So what I did is I went back and I had
some of our cracker-jack legal staff here do
some independent research for me, and after
reviewing that information I understand the
law to be, as I set forth in my order, that a
blanket objection on Fifth Amendment
constitutional grounds is generally

5	<p>1 unacceptable, and the Courts have outlined a 2 methodology by which the Court can test the 3 legitimacy of a Fifth Amendment claim when 4 it's basically a broad brush.</p> <p>5 And that methodology, as outlined in the 6 cases I cited, is that you ask for and obtain 7 an in camera privilege log, one that is not 8 provided to the other side, an in camera 9 privilege log directed to the Court alone that 10 outlines; one, the document, and provides me a 11 copy of the document; two, the privilege that 12 you are asserting, whether it be 13 constitutional or non-constitutional; and the 14 third, the basis that you feel, at least on 15 constitutional grounds, that the production, 16 for example, is, in fact, testimonial and that 17 you have a reasonable basis to believe that 18 producing the document, if it's an individual 19 or a corporation, would, in fact, incriminate 20 the client.</p> <p>21 As I understand the case law, the Court 22 is then to look at that in camera production, 23 nobody gets a copy of it, I take a look at it, 24 I make a decision whether or not there is, in 25 fact, a good faith basis for a constitutional</p>	7	<p>1 not there is a Fifth Amendment privilege, 2 like, for example, as I understand, the 3 production of documents, the actual production 4 itself must be testimonial, not the document 5 necessarily, and there are various different 6 things I have to look at, and I recognize that 7 your client deserves, you know, the utmost 8 protection of his constitutional rights.</p> <p>9 But the pragmatic reason I thought out 10 loud in my order was that, what happens then, 11 I would be able to rule on your 12 non-constitutional privileges, because at 13 trial, very simply, what can happen is, you 14 can't ask somebody at trial an attorney/client 15 privilege question, you can't ask them a work 16 product privilege question, so if the only 17 privilege remaining is, in fact, subject to 18 self-incrimination under the Fifth Amendment, 19 that can be asked of the witness on the stand, 20 and he must assert his right at the time of 21 trial, and the jury can take whatever they 22 want to from that.</p> <p>23 That's the reason I set forth this 24 procedure. I'm sorry it wasn't clear. That's 25 the procedure I set up. But do you want me to</p>
6	<p>1 objection on Fifth Amendment grounds.</p> <p>2 Also I look at the documents to determine 3 whether or not the other privileges apply, the 4 attorney/client privilege, work product 5 privilege, accountant privilege, and, if I 6 can, I make rulings based upon that internal 7 privilege log or in camera privilege log.</p> <p>8 In fact, the case law goes forward from 9 there and actually says, if I can't determine 10 it from that, I can actually have an in camera 11 hearing where I can have you and your client 12 appear and produce additional information to 13 me to allow me to make that decision as to 14 whether or not the documents in good faith are 15 constitutional.</p> <p>16 No one is trying to abrogate your 17 client's Fifth Amendment privilege, but there 18 has to be a method to test whether there's a 19 good-faith basis for it and to rule on the 20 other privileges, and if I need a further 21 hearing, I can have a further hearing. Mr. 22 Scarola is not a part of that. Then I make a 23 ruling.</p> <p>24 And the pragmatic and practical reason 25 for that is not only to determine whether or</p>	8	<p>1 reconsider that theory or you just didn't 2 understand what I was doing? I'm not sure I 3 understand what you're asking.</p> <p>4 MS. COLEMAN: I understood your order, 5 but it was in direct contravention with your 6 first order, and it --</p> <p>7 THE COURT: Well, the initial order 8 contemplated that there would be a subset of 9 documents which were privileged based upon 10 non-constitutional grounds that I could look 11 at and make determinations on, but the reality 12 is that they apply to all of them, so there's 13 no way I can look at the documents and make 14 determinations on work product, attorney/ 15 client, accountant privilege, I am not sure of 16 all the other privileges, without looking at 17 the document, and that's what I asked and did 18 research on, to determine how I look at a 19 document that is claimed to be Fifth Amendment 20 privileges.</p> <p>21 And the Federal Courts have set up a way 22 to do that because, otherwise, people would 23 just have a blanket assertion. In fact, there 24 are two Supreme Court cases I think I cited, 25 one where they said, yeah, the other one said,</p>

9	<p>1 no, and then there's a lower court setting 2 forth a procedure to do it.</p> <p>3 MS. COLEMAN: The problem with which we 4 are faced with, Judge, is this: 5 We did not assert a blanket Fifth 6 Amendment privilege. It was very specific as 7 to certain requests to which we argued. And 8 the interrogatories was the other portion of 9 which we were requesting clarification of, but 10 I will address that momentarily.</p> <p>11 If the documents are provided to you, 12 even for an in camera review, the Fifth 13 Amendment privilege is waived. Respectfully, 14 Judge, hypothetically speaking, if you saw 15 something --</p> <p>16 THE COURT: You mean I got it totally 17 wrong?</p> <p>18 MS. COLEMAN: Judge, I am not trying to 19 say you got it totally wrong, but the case law 20 research, my case law research and the 21 research that the criminal defense attorneys 22 with whom I'm working, states that --</p> <p>23 THE COURT: What case are you relying 24 upon? Actually, I ran this by somebody who 25 teaches this that's a colleague of mine,</p>	11	<p>1 criminal, respectfully, this Court cannot 2 confer immunity upon my client from 3 prosecution of that.</p> <p>4 In fact, I believe under the Judicial 5 Canons, you would be obligated to turn it 6 over. And we proffered this, and I did cite 7 case law in our motion for clarification in 8 which we asserted that a proffer from the 9 attorney is specific enough, and we have laid 10 it out many times.</p> <p>11 THE COURT: Which case is that?</p> <p>12 MS. COLEMAN: The proffer from the 13 attorney would be sufficient, ironically, it's 14 in regards to Rothstein versus Albert, which 15 is cited on page 6 of our motion. And, in 16 addition, Judge, there are cases where, if you 17 look at all the other cases to which we refer, 18 it's a realistic fear of future prosecution.</p> <p>19 We have delineated in here, this is a 20 unique situation, Mr. Edwards is actively 21 seeking to overturn a non-prosecution 22 agreement between Mr. Epstein and the United 23 States government. Part of the allegations by 24 the United States government, and again of 25 course I am not saying they are true, part of</p>
10	<p>1 teaches federal prosecutors the issue. Which 2 case are you relying upon?</p> <p>3 MS. COLEMAN: I am looking at Piscioti 4 versus Stephens; 940 So.2d, 1217; Maged versus 5 Winter, 664 So.2d --</p> <p>6 THE COURT: Where in your motion is it?</p> <p>7 MS. COLEMAN: I'm on page 3 of my motion 8 for clarification.</p> <p>9 THE COURT: Okay. And it's Maged versus 10 Winter?</p> <p>11 MS. COLEMAN: If you turn to page 3, 12 Judge, that entire page, it discusses --</p> <p>13 THE COURT: It says the production in 14 camera to the Court to determine the validity 15 of the Fifth Amendment privilege waives the 16 privilege?</p> <p>17 MS. COLEMAN: It does, Judge. If you 18 would allow me to finish, I will explain to 19 you the issue.</p> <p>20 THE COURT: Okay, I'm sorry.</p> <p>21 MS. COLEMAN: Hypothetically speaking, 22 let's say the documents are given to you and 23 you see something that in and of itself would 24 constitute a reason to assert the Fifth 25 Amendment, it could possibly be deemed</p>	12	<p>1 the allegations to which the government was 2 referring included financial crimes.</p> <p>3 As such, if any of this financial 4 information is provided to this Court and/or 5 if Mr. Edwards is successful in his quest to 6 do this, the docket is 427 entries long, it's 7 an active case, Mr. Epstein runs the risk of 8 being prosecuted for these things should there 9 be anything incriminating therein.</p> <p>10 The biggest issue with which we are 11 faced, Judge, is if the mere act of producing 12 these documents or identifying these documents 13 would waive his Fifth Amendment privilege, 14 then he has lost that Fifth Amendment 15 privilege.</p> <p>16 I do appreciate the concern with respect 17 to the other privileges, and I don't have an 18 answer, if I had been able to find one I would 19 have given it to you, but the risk we're faced 20 with today is that if he must lose all those 21 other privileges, accountant/client, 22 attorney/client, work product, and only be 23 permitted to assert the Fifth, then that's 24 what he is going to have to do, because I 25 don't see any way in which the client can</p>

13	<p>1 produce the documents.</p> <p>2 Again, I don't read any of these cases to</p> <p>3 state that an in camera review of a privilege</p> <p>4 log would not waive the Fifth Amendment</p> <p>5 privilege, I don't see that in any of these</p> <p>6 cases, which is why we were asking for the</p> <p>7 clarification.</p> <p>8 THE COURT: Okay. I'm going to have to</p> <p>9 look at it again. This is complex stuff.</p> <p>10 MS. COLEMAN: It is very complex, I don't</p> <p>11 disagree.</p> <p>12 THE COURT: Okay, Mr. Scarola.</p> <p>13 MR. SCAROLA: I thought that I just heard</p> <p>14 counsel offer to agree that the only</p> <p>15 applicable privilege for purposes of this</p> <p>16 proceeding would be the Fifth Amendment</p> <p>17 privilege, and if that is what counsel is</p> <p>18 prepared to agree to, that is an acceptable</p> <p>19 stipulation.</p> <p>20 That's what we have been asserting from</p> <p>21 the beginning of this controversy, that it is</p> <p>22 necessary for the Court to implement a</p> <p>23 procedure, which the Court has very clearly</p> <p>24 outlined in Your Honor's order, which would</p> <p>25 allow you to make a determination with regard</p>	15	<p>1 situation under which my client can't turn</p> <p>2 over any of these documents.</p> <p>3 So by actively seeking to overturn this</p> <p>4 non-prosecution agreement he places my client</p> <p>5 in a legitimate fear that he could be</p> <p>6 prosecuted for anything that could arise out</p> <p>7 of this transactional event, including any</p> <p>8 alleged financial crimes, because that is what</p> <p>9 the government was initially alleging.</p> <p>10 THE COURT: So your position, very</p> <p>11 simply, is in a civil case where there are</p> <p>12 multiple privileges asserted to almost all the</p> <p>13 documents there is no methodology or method by</p> <p>14 which the Court can determine the validity of</p> <p>15 those assertions and, therefore, Mr. Scarola</p> <p>16 can't ask your client any questions?</p> <p>17 MS. COLEMAN: Judge, again, I have not</p> <p>18 seen a case -- I don't have an answer for</p> <p>19 you. We can try to give you an answer on</p> <p>20 Monday. We have a one hour special set</p> <p>21 hearing.</p> <p>22 THE COURT: I asked for that before I</p> <p>23 thought. I didn't get a lot of help. I tried</p> <p>24 to do it on my own.</p> <p>25 MS. COLEMAN: Because there's not a</p>
14	<p>1 to the validity of other privileges, even</p> <p>2 assuming that the Fifth Amendment privileges</p> <p>3 were to apply.</p> <p>4 If opposing counsel is agreeing that they</p> <p>5 will waive privileges other than the Fifth</p> <p>6 Amendment privilege, in order to avoid the</p> <p>7 procedure that Your Honor has outlined, that</p> <p>8 is acceptable, we accept that stipulation.</p> <p>9 THE COURT: I don't think you are going</p> <p>10 to get it, but...</p> <p>11 MS. COLEMAN: Honestly, I don't know that</p> <p>12 my client can be forced into that position.</p> <p>13 The bigger issue is, respectfully, again this</p> <p>14 Court can't confirm immunity upon Mr. Epstein,</p> <p>15 and if there's anything in those documents to</p> <p>16 which a crime or a link to a crime could be</p> <p>17 possibly furnished, the Court would have an</p> <p>18 ethical obligation to turn it over.</p> <p>19 If we could get the United States</p> <p>20 government, who is a party to this lawsuit</p> <p>21 with Mr. Edwards, to come in here and confirm</p> <p>22 immunity upon Mr. Epstein, I am sure there</p> <p>23 would be no issue with making a privilege log</p> <p>24 and providing all these documents. But Mr.</p> <p>25 Edwards, respectfully, has created this</p>	16	<p>1 simple answer out there, Judge, and I can't</p> <p>2 just blanketly waive my client's rights to all</p> <p>3 his privileges without conferring with him,</p> <p>4 but the situation with which we are faced is</p> <p>5 my client is now being put in a position where</p> <p>6 he has to potentially waive any other</p> <p>7 privilege he may be able to assert or waive</p> <p>8 his constitutional privilege.</p> <p>9 THE COURT: Okay, here's what I am going</p> <p>10 to do. I am going to stay production of the</p> <p>11 documents until I have a chance to look at</p> <p>12 this. Unfortunately, I'm in the middle of a</p> <p>13 rather lengthy trial right now, and I will get</p> <p>14 to it as soon as I can, but it won't be</p> <p>15 tomorrow, it will be some time next week at</p> <p>16 the earliest. But I will get you something</p> <p>17 out as to what we're going to do here.</p> <p>18 MS. COLEMAN: Judge, the last part of the</p> <p>19 clarification is, your order does speak to the</p> <p>20 interrogatories, but you never actually said</p> <p>21 whether or not you expected further responses</p> <p>22 to the interrogatories, and I cited some case</p> <p>23 law in our motion for clarification in which</p> <p>24 the law is clear that interrogatories, because</p> <p>25 they must be verified and sworn to, are</p>

1 testimonial in nature. So that might be a
2 little easier to answer, but please note that
3 that was something with which we were also
4 seeking clarification.

5 THE COURT: Okay. Well, there are two
6 categories of documents here, as I understand
7 it. One is documents in the possession or
8 alleged to be in the possession of your
9 client, the other is documents which are in
10 the possession of or are corporate documents
11 or something like that.

12 MS. COLEMAN: No, Judge, that was another
13 portion of it. There are no corporate
14 documents. All of the requests are to Mr.
15 Epstein.

16 THE COURT: I don't mean corporate
17 documents, but documents that are not personal
18 to him necessarily.

19 MS. COLEMAN: I think the easiest way to
20 go through this might be to look at each
21 request individually, rather than trying to
22 make these blanket or combination assertions,
23 because --

24 THE COURT: The problem is you make
25 blanket objections.

1 MS. COLEMAN: We didn't, Judge. We
2 objected to each one individually.

3 THE COURT: In the same objection, like
4 you just mimeographed it. Well, y'all are too
5 young to remember mimeographs.

6 MR. SCAROLA: Not all of us.

7 MS. COLEMAN: No, Judge, not to all of
8 them. Some of them, for example, may have a
9 work product type privilege or a third party
10 privacy right privilege. I'll just give you
11 an example: Any account on which Mr. Epstein
12 would have signatory authority.

13 THE COURT: Okay, I have to move on. I
14 will take a closer look at it. I have already
15 taken a close look at it. I will take a
16 magnifying glass to it, I guess, and get you
17 something out.

18 MS. COLEMAN: Thank you, Judge.

19 MR. SCAROLA: Thank you, Your Honor.
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CERTIFICATE OF REPORTER

1
2
3
4 I, Roger Watford, Florida Professional
5 Reporter, certify that I was authorized to and
6 did stenographically report the foregoing
7 proceedings and that the transcript is a true
8 and complete record of my stenographic notes.
9

10 I further certify that I am not a
11 relative, employee, attorney or counsel of any
12 of the parties, nor am I a relative or
13 employee of any of the parties' attorneys or
14 counsel connected with the action, nor am I
15 financially interested in the action.
16

17 Dated this 21st day of June, 2013.
18

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20 



21 Roger Watford, FPR/RPR
22
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