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IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT, IN AND FOR
PALM BEACH COUNTY, FLORIDA
CASE NO. 50-2009-CA-040800-AG

JEFFREY EPSTEIN,
Plaintiff,
vs.

SCOTT ROTHSTEIN, et al.,
Defendants.

TRANSCRIPT OF HEARING

Volume 1 of 1

Pages 1 - 33

DATE: Monday, April 22, 2013
TIME: 9:30 o'clock, a.m.
PLACE: Palm Beach County Courthouse
205 North Dixie Highway
West Palm Beach, Florida 33401
BEFORE: Honorable David F. Crow,
Circuit Court Judge

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

Roger Watford, RPR/FPR
U.S. Legal Support, Inc.
444 West Railroad Avenue
Suite 300
West Palm Beach, Florida 33401

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APPEARANCES:
FOR THE PLAINTIFF/COUNTER-DEFENDANT:
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BY: JACK GOLDBERGER, ESQ.

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FOR THE DEFENDANT/COUNTER-PLAINTIFF:
SEARCY, DENNEY, SCAROLA, BARNHART
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BY: JACK SCAROLA, ESQ.

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The above-styled cause came on for
hearing before the Honorable David F. Crow,
Circuit Court Judge, at the Palm Beach County
Courthouse, 205 North Dixie Highway, West Palm
Beach, Florida, on April 22, 2013, commencing
at 9:30 o'clock, a.m., as follows:

THE COURT: Okay, we are here on Epstein
versus Rothstein and Edwards. We are dealing
with the objections to the production and a
discovery of financial information. I have
read both parties submittals. I have read a
number of these cases so I am ready to hear
argument. I not sure which motion is first.
There was objections and your motion.

MR. SCAROLA: May I approach, Your
Honor?

THE COURT: I think you are the one
seeking discovery.

MR. SCAROLA: I am the one seeking
discovery, although it will be our position,
as evidenced by the cases that we have
submitted, that the burden of establishing the
propriety of these privileges rests upon the
party asserting the privilege.

I have prepared for Your Honor what I

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hope will be of some assistance in getting
through this matter, and it is an outline of
the procedural history of our efforts to
obtain financial discovery, which began almost
exactly to the day four months ago on December
21, 2012. That's when we served the request
for production and the interrogatories that
are the focus of the motion to overrule all
claims of privilege other than claims of Fifth
Amendment privilege and to impose sanctions.
We also served I believe at that same time our
request for admissions that are the subject of
our motion pursuant to Rule 1.370 to deem the
request for admissions admitted for failure to
file proper responses. Those are basically
the two matters before the Court. There are
competing memoranda, but the motions giving
rise to the issues are those two motions.

As the outline indicates, in response to
the discovery requests that were filed on the
21st we received a motion for protective
order. The motion for protective order
asserted that the discovery requests were
harassing, oppressive and embarrassing. There
was no assertion of any privilege with regard

<p>1 to any of the requests that had been made in 2 that timely response to the discovery that had 3 been posed. 4 On January 29, following a hearing, Your 5 Honor entered an order denying Epstein's 6 motion for protective order, but that order 7 did not specifically identify a time period 8 for response. The order did say that a 9 response was to be made and that the 10 production made pursuant to the response was 11 to be subject to confidentiality. I have 12 copies of these pleadings if Your Honor needs 13 to see any of the motions or the orders. 14 THE COURT: No, I don't need to see them. 15 MR. SCAROLA: All right. On February 4, 16 2013 Your Honor entered an order compelling 17 responses within 20 days because the prior 18 order did not specify a time. We came back 19 before the Court, I asked you to specify a 20 time, you specified a time of 20 days. On 21 February 22nd, 2013 we received unverified 22 objections and then on February 25th a 23 verification was filed and we filed a motion 24 to strike untimely objections. 25 On March 4, 2013 a response to that</p>	<p>5</p>	<p>1 had an opportunity to review that in some 2 detail, what is called a privilege log, it's 3 far from a privilege log. What it is is a 4 repetition of objections to having to file a 5 privilege log and argument as to why no log 6 should be filed. 7 So our position is that Mr. Epstein again 8 has ignored this Court's order, the intent of 9 the order, to require that a basis be 10 established for the privileges that were being 11 asserted and that on that basis alone all of 12 these objections, other than the Fifth 13 Amendment privilege objections, can be 14 overruled. However, we are prepared today to 15 deal with those objections on their merits. 16 We have submitted a memo in detail dealing 17 with each of those objections, identifying 18 each of the discovery requests by number as to 19 which we believe the objections cannot 20 possibly be supported, but again, with regard 21 to all privilege assertions, the burden falls 22 upon the other side. 23 We filed our motion to overrule all 24 claims of privilege other than the Fifth 25 Amendment privilege and we filed our Rule</p>	<p>7</p>
<p>1 motion to strike was filed and our position 2 was that objections served more than 30 days 3 beyond the deadline under the rules were 4 untimely and ought to be stricken and there 5 was a motion, as I said, a motion for 6 protective order that was filed based upon the 7 fact that the interrogatories, the discovery 8 requests in general, were harassing, 9 oppressive and embarrassing, and Your Honor 10 denied the motion for protective order by 11 order of March 11, 2013. That order struck 12 all objections other than privilege and 13 required a privilege log, except as to the 14 Fifth Amendment privilege assertions, within 15 15 days. 16 On March 20, 2013 we filed a notice of 17 hearing for today's half hour hearing to deal 18 with any privilege assertions that were made. 19 On the 21st Mr. Epstein's counsel filed a 20 motion for clarification arguing that all of 21 the issues with regard to discovery had been 22 resolved and our filing the notice of hearing 23 was sanctionable. On the 26th of March 24 Epstein's counsel filed what was labeled as a 25 privilege log. I assume by now Your Honor has</p>	<p>6</p>	<p>1 1.370 motion to deem the request for 2 admissions admitted. That motion, the 1.370 3 motion, addresses only requests for admissions 4 12 and 13. Those requests are requests that 5 ask that Mr. Epstein admit that he has not 6 paid a single penny in punitive damages and a 7 request that he admit that he has not spent a 8 single day in a state or federal prison 9 facility. It is impossible to imagine how an 10 acknowledgment of those matters that are 11 clearly matters of record could ever be a link 12 in the chain of incrimination or be covered by 13 any of the other privileges that have been 14 asserted. The responses that were made were 15 clearly evasive and improper under the rules. 16 So that's our initial presentation. It's 17 our belief that the burden shifts to the other 18 side. I will sit down and shut up and wait to 19 hear what they have to say. 20 THE COURT: Before you do that, I want 21 you to list the relief you specifically want. 22 You made it clear on the 1.370 that they were 23 deemed admitted? 24 MR. SCAROLA: Yes, sir. 25 THE COURT: And you want me to overrule</p>	<p>8</p>

<p style="text-align: right;">9</p> <p>1 all objections other than self-incrimination 2 or Fifth Amendment privilege? 3 MR. SCAROLA: Yes, sir. 4 THE COURT: And that to do that without 5 any in camera inspection at all? 6 MR. SCAROLA: No, sir. What our position 7 is, is that from a procedural standpoint Your 8 Honor could at this point, because of the 9 failure to timely assert objections, Your 10 Honor could overrule those objections and not 11 be obliged to engage in an in camera 12 inspection. 13 Your Honor can also, on the basis that 14 substantively there has been no support for 15 those objections, overrule the objections. So 16 that's alternative number 2. Alternative 17 number 3 is, because of a failure to file a 18 privilege log, you could overrule the 19 objections. And the fourth alternative is you 20 could order a privilege log and/or even 21 without a privilege log an in camera 22 inspection. 23 Your Honor expressed concern at an 24 earlier hearing about the ability to be able 25 to conduct an in camera inspection in light of</p>	<p style="text-align: right;">11</p> <p>1 THE COURT: Let me ask you another 2 question about the procedure. And I know 3 certainly the procedure in all of the 4 privileges of self-incrimination. There seems 5 to be some indication in the case law that 6 some type of hearing or some kind of 7 evidentiary proffer in camera should be 8 conducted; is that right? 9 MR. SCAROLA: Yes, sir. That's been my 10 experience in the past, that the Court, with a 11 court reporter, in camera gives the party 12 asserting the privilege the opportunity to 13 explain why the discovery sought, whether 14 testimonial or documentary, why the discovery 15 sought could provide a link in the chain of 16 incrimination with regard to a genuine issue 17 of potential criminal liability. 18 THE COURT: And are you saying this is an 19 ex parte hearing? 20 MR. SCAROLA: It is ex parte, yes, sir. 21 I am not there. 22 THE COURT: I just want to know what your 23 position is. 24 MR. SCAROLA: That's our position. Our 25 position is that it's an ex parte proceeding</p>
<p style="text-align: right;">10</p> <p>1 the Fifth Amendment privilege assertion. The 2 case law is clear, and I haven't heard 3 anything from the other side to rebut that, 4 that this Court has the ability to be an 5 arbiter of the validity of the assertion of 6 privilege, even Fifth Amendment privileges, 7 and you are not precluded from requiring, on 8 an in camera basis, a showing be made both 9 with regard to testimonial assertions and 10 documentary assertions as to why what is asked 11 for has a causal link or a potential causal 12 link to the criminal jeopardy that we 13 acknowledge Mr. Epstein still faces. 14 There are matters out there. He faces 15 potential criminal liability. We are not 16 trying to overrule the Fifth Amendment 17 privilege. But I want to overrule all the 18 other privileges, I want them eliminated, so 19 that when we are before a jury the single 20 privilege that has been asserted is a Fifth 21 Amendment privilege, and, as I have explained 22 to the Court before, it's our position that 23 that will enable us to draw adverse inferences 24 from those assertions and argue those adverse 25 inferences before the jury.</p>	<p style="text-align: right;">12</p> <p>1 and the purpose of the proceeding, obviously, 2 is to not allow the party asserting the 3 privilege to be the final arbiter of whether 4 there is a reasonable basis for asserting the 5 privilege. The Court has the ability and the 6 responsibility to conduct that hearing to 7 determine whether, in fact, there really is a 8 potential link in the chain of incrimination. 9 THE COURT: Okay. 10 MR. SCAROLA: Thank you very much, Your 11 Honor. 12 THE COURT: Counsel. 13 MS. COLEMAN: Good morning, Judge. I am 14 going to speak to all of the other issues with 15 the exception of the Fifth Amendment. I am 16 going to allow Mr. Goldberger to speak to 17 that, since he was Mr. Epstein's criminal 18 defense attorney and is far better equipped 19 than I to deal with that. 20 I would like to go in reverse order from 21 which Mr. Scarola spoke. With respect to 22 their motion to strike or have deemed admitted 23 the request for admissions numbers 12 and 13, 24 first, with respect to admission number 12 in 25 which Mr. Edwards asked that Mr. Epstein admit</p>

<p style="text-align: right;">13</p> <p>1 that he has never paid a certain amount of 2 money in damages, Mr. Epstein asserted his 3 Fifth Amendment privilege against self- 4 incrimination because this involves financial 5 issues which could have possibly stemmed from 6 allegations of criminal misconduct and, 7 therefore, he is asserting his Fifth Amendment 8 privilege. 9 It was spelled out very clearly, it was 10 properly pled, the proper cases were cited, so 11 we are in a position, of course, that the 12 Court cannot deem that one admitted because 13 Mr. Epstein asserted his Fifth Amendment 14 privilege. 15 THE COURT: Let me ask you, a lot of this 16 is new to me, so there's no way to test a 17 Fifth Amendment protection in a civil context, 18 there's no way to test the validity of the 19 Fifth Amendment, by in camera or otherwise, 20 protection request under a request for 21 admissions or not? 22 MS. COLEMAN: My research indicates not 23 under any discovery, Judge. In fact, I have a 24 giant pile of cases here for you I would be 25 happy to bring up now or afterwards, but if a</p>	<p style="text-align: right;">15</p> <p>1 number 13, as drafted, and the Court can look 2 at it, it's asking Mr. Epstein to admit that, 3 the way it's written it's a double negative 4 grammatically, not understandable, and the way 5 it was responded to, Mr. Epstein admitted it. 6 He admitted that he served, he pled to 7 certain charges for which he was sentenced to 8 Palm Beach County Jail, and he served the time 9 for the charges for which he pled. I don't 10 know how it could be any more clear. He 11 admits he went to jail, he admits he pled to 12 the charges. Quite frankly, it's a matter of 13 public record. 14 So if he didn't answer it in the 15 appropriate manner I am sure there are other 16 sanctions Mr. Scarola could come up with at 17 trial, but the point is we couldn't merely 18 admit or deny as it was drafted. As such, we 19 reformulated the sentence to admit basically 20 what he was asking but to put it in the proper 21 format so it was very clear as to that portion 22 to which Mr. Epstein was admitting. 23 And I would like to go back with respect, 24 because you were given again another 25 handwritten delineation of what's occurred,</p>
<p style="text-align: right;">14</p> <p>1 witness testifies in writing or orally at any 2 stage in the proceeding he loses the 3 privilege. The privilege is waived. That's 4 the United States Supreme Court case, 5 Minnesota vessels Murphy. 6 THE COURT: I just want to know what your 7 position is so I am clear. Your position 8 would be that, forget about what the questions 9 are, but he could raise in response to a 10 request for admissions a Fifth Amendment 11 privilege and that ends the discussion? 12 MS. COLEMAN: Yes, sir. And ironically 13 there were 13 admissions served. The Fifth 14 Amendment was asserted for numbers 1 through 15 12. He answered number 13. So the Fifth 16 Amendment was asserted for the first 12 but 17 Mr. Scarola is only objecting to number 12. I 18 don't know why. I can't presume to know why. 19 MR. SCAROLA: The motion addresses 12 and 20 13, Your Honor, expressly 12 and 13. 21 MS. COLEMAN: If I may finish, we didn't 22 assert the Fifth Amendment with respect to 23 number 13. But the Fifth Amendment was 24 addressed and asserted with respect to number 25 12. With respect to request for admission</p>	<p style="text-align: right;">16</p> <p>1 when we filed the initial motion for 2 protective order the only grounds alleged, and 3 legally the only grounds required to be 4 alleged under the Rules of Civil Procedure, 5 are grounds of harassment, oppressive or 6 embarrassing, and that is exactly what we 7 raised in our protective order. Once you deny 8 the protective order, the law is clear that we 9 are permitted to assert any privileges or any 10 objections that were not raised in the 11 protective order. 12 Mr. Scarola has not provided this Court 13 with one case to the contrary. I am citing to 14 you the plain language of the rules. You have 15 already ruled on it, I realize we're not here 16 on a motion for rehearing, but it's very 17 important, because Mr. Scarola has repeatedly 18 accused us of not filing timely our objections 19 and our assertions of privilege, and that's 20 simply not true. 21 Pursuant to this Court's own order, the 22 deadline for us to file responses, whatever 23 they may be, to the interrogatories and 24 requests to produce was February 25th. We 25 filed unverified on the 22nd and verified on</p>

<p style="text-align: right;">17</p> <p>1 the 25th. Therefore, we were well in 2 compliance with this Court's order and with 3 the applicable law. 4 Second, Judge, with respect to the 5 request for sanctions for failure to comply 6 with your March 11th order, your order clearly 7 states that we shall provide a detailed 8 privilege log for every request to which we 9 did not assert the constitutional privilege. 10 The issue with which we were faced, and 11 perhaps it would have been better if we had a 12 longer hearing before the order was issued in 13 retrospect, was that the Fifth Amendment 14 privilege was asserted to every other 15 objection or privilege that was asserted to 16 another question. 17 And let me be clear because I don't know 18 that that made sense. 19 THE COURT: It made sense. 20 MS. COLEMAN: Okay. Additionally, Judge, 21 that put us in compliance with your order 22 because you stated to file a privilege log 23 with everything else. By adding in the case 24 law applicable to content specific, the 25 document specific privileges, we were not</p>	<p style="text-align: right;">19</p> <p>1 States, 341 U.S., 479: 2 "The Court is forbidden from requiring 3 an invoker of the Fifth Amendment to tell the 4 Court what the response would be even if in 5 camera revelation of the response could 6 surrender the protection." 7 Because of that research, Judge, we were 8 faced with a very unique situation, the Court 9 admittedly had never seen it, I have never 10 seen it, in which we weren't sure how to 11 provide a privilege log without eviscerating 12 the Fifth Amendment privilege, and the case 13 law seems clear to me that we can't, but it 14 don't necessarily mean that our privileges 15 must be stricken. 16 And, because Mr. Scarola offered four 17 alternatives, we want to point out to you; 18 number one, our objections were not untimely; 19 number two, we complied with the Court's order 20 to the best of our legal ability; number 3, we 21 didn't assert any privileges that were in the 22 objections that were asserted in the initial 23 request for protective order, and, as such, 24 didn't violate the Court's previous ruling; 25 and finally, Judge, with respect to the</p>
<p style="text-align: right;">18</p> <p>1 trying to relitigate the issue but rather to 2 educate the Court and Mr. Scarola regarding 3 the content specific privilege versus the 4 document for document privilege, because the 5 law is very clear, and again I have the law 6 here for you, any attempt to provide that 7 privilege log -- 8 THE COURT: Do you have something other 9 than what you cited in your memo? 10 MS. COLEMAN: Yes, we have additional 11 cases. 12 MR. SCAROLA: Which I have not seen, and 13 I request that they be provided, Your Honor. 14 THE COURT: Have you provided them to 15 counsel? 16 MS. COLEMAN: Judge, they were cited in 17 our response, but I will -- 18 THE COURT: I thought you said they 19 weren't cited. 20 MS. COLEMAN: The most recent ones we 21 filed, yes, they were. 22 THE COURT: Okay. So all this was in 23 your memo? 24 MS. COLEMAN: Yes, Judge. And I would 25 point the Court again to Hoffman versus United</p>	<p style="text-align: right;">20</p> <p>1 argument that the category privilege log was 2 not sufficient, we would again rely on the 3 cases that we previously cited in our category 4 specific privilege log memorandum. 5 And Mr. Goldberger is going to come up 6 and explain more about the Fifth Amendment and 7 talk about the cases on which Mr. Scarola 8 relied in his responses. But after that, if 9 Mr. Scarola does speak to any of the issues 10 which I have already discussed with you, I 11 would like to be afforded the opportunity to 12 respond. 13 THE COURT: So Mr. Goldberger is going to 14 deal with the in camera inspection, under what 15 circumstances I can or cannot look at the 16 documents? 17 MS. COLEMAN: He is, Judge. I am also 18 prepared, by way of example, just to give you 19 a hypothetical example of one of the issues, 20 because the other problem with which we are 21 faced, and this is something I want you to be 22 aware of before you rule, the discovery 23 requests for net worth that were served upon 24 Mr. Epstein are the form post-judgment civil 25 procedure rule interrogatories request for</p>

21	<p>1 production that are applicable in a post- 2 judgment context.</p> <p>3 They all ask for documents within the 4 past five years, accounts upon which someone 5 is a signatory, accounts upon which you have 6 withdrawal authority, et cetera. It's a very 7 important distinction. This is a net worth 8 discovery, not a post-judgment discovery, and 9 furthermore, this discovery is not germane to 10 Mr. Edwards proving anything he's alleged in 11 his case in chief; rather, this goes to 12 punitive damages, so as an alternative we 13 would offer to the Court, should the damages 14 issues be bifurcated from the actual 15 allegations, this is something that we could 16 at least table or stay until another point in 17 time, because Mr. Epstein did, contrary to Mr. 18 Scarola's assertion --</p> <p>19 THE COURT: Nobody has moved to 20 bifurcate, have they?</p> <p>21 MS. COLEMAN: Not yet, Judge. I am just 22 trying to get this discovery issue organized. 23 We have some motions for discovery we intend 24 to file against Mr. Edwards as well. I'm just 25 trying to do one thing at a time.</p>	23	<p>1 for allowing us to split this issue and having 2 two lawyers.</p> <p>3 Procedurally, the cases cited by Mr. 4 Scarola are simply just not applicable to the 5 situation before Your Honor. All those cases 6 deal with unique issues, two in criminal cases 7 and one in a civil case, where the Court is 8 asked to determine whether there's a Fifth 9 Amendment privilege that actually exists.</p> <p>10 In the case before Your Honor Mr. Edwards 11 has conceded the existence of a valid Fifth 12 Amendment privilege. They have not raised 13 objections to our invoking our Fifth Amendment 14 privileges. In fact, every time Mr. Scarola 15 addresses this he says "except for the Fifth 16 Amendment privilege."</p> <p>17 THE COURT: I understand. Let me ask you 18 this question. In this particular case what I 19 am having trouble wrapping my head around is, 20 there are multiple objections to this 21 discovery request independent of the Fifth 22 Amendment. How do I deal with the 23 attorney/client?</p> <p>24 I mean, it looks like on the face of it 25 some of these privileges, you know, the third</p>
22	<p>1 THE COURT: Well, aside from all of the 2 privilege issues here which complicate this 3 case, the discovery with regard to net worth 4 is very broad. Forget about the situation in 5 our case. A negligence case, a drunk driver, 6 something like that, it's pretty broad. What 7 comes into evidence may be different, but the 8 discovery is pretty broad in punitive damages.</p> <p>9 MS. COLEMAN: I understand that. But 10 again the problem with which we're faced here, 11 and I can't really explain it too much due to 12 the Fifth Amendment issues, is my client is a 13 financier, he is in the financial industry, so 14 some of these requests don't differentiate as 15 to his personal business, et cetera. It's 16 almost impossible to try to answer when it's 17 such a broad request.</p> <p>18 THE COURT: Well, after I read your 19 materials, I do understand your position. 20 I've made it very clear. I do understand it. 21 I just don't know the -- but let Mr. 22 Goldberger tell me how I should deal with it 23 or at least his position on how I should deal 24 with it.</p> <p>25 MR. GOLDBERGER: Thank you, Your Honor,</p>	24	<p>1 party privilege, some of these on trade 2 secrets, I don't know how some of these 3 privileges could be applicable to some of the 4 requests, although I may be educated, but how 5 would I deal with determining, as Mr. Scarola 6 says he is entitled to know, that, yeah, the 7 Fifth Amendment is over here but, you know, 8 these things are not Fifth Amendment?</p> <p>9 MR. GOLDBERGER: I wish I had an answer. 10 It's a really difficult issue. My concern is, 11 I represent an individual on past criminal 12 charges and potential future criminal charges, 13 and certainly Mr. Scarola's client is trying 14 to overturn a resolution of the case, so it's 15 not just some abstract concern about Fifth 16 Amendment issues, it's a real issue.</p> <p>17 If, in fact, we are ordered to disclose 18 in camera to the Court the basis for our Fifth 19 Amendment privileges, I am very concerned that 20 we would have indeed waived our Fifth 21 Amendment privilege. And I understand the 22 Court's dilemma in trying to deal with the 23 other privileges that are raised, but my 24 client's constitutional rights must rise 25 above, you know, the civil procedure rights.</p>

25	<p>1 THE COURT: Well, how do we proceed, put 2 him on the stand at trial and say, "Isn't it 3 true that your net worth is over 20 billion 4 dollars," and have him take the Fifth 5 Amendment? 6 MR. GOLDBERGER: If there's an adverse 7 inference that flies from that, so be it, I 8 don't know if there is or not, but then Mr. 9 Scarola is left with that. But, you know, the 10 three cases cited by counsel, and that's the 11 point I want to make, they are unique 12 circumstances where the Court had to determine 13 whether it was a Fifth Amendment privilege. 14 One is where the guy was given immunity 15 and he was still invoking Fifth Amendment 16 privileges, another is a penalty phase case, 17 and the third is a request for admissions, 18 whether that provides a less clear link to 19 involve Fifth Amendment privileges. Those are 20 all unique factual situations that are not 21 here because counsel has conceded the 22 applicability of the Fifth Amendment 23 privilege. 24 So I've made my presentation, but I am 25 afraid I can't answer the Court's threshold</p>	27	<p>1 other side. 2 So the statement that we concede the 3 validity of the Fifth Amendment privilege is 4 not accurate. We are willing to accept the 5 alternative remedy available to us, and that 6 is to draw adverse inferences from the 7 assertion of the Fifth Amendment privilege. 8 Now, I am not sure, from what Mr. 9 Goldberger told the Court, whether he is 10 making a concession. If he is conceding that, 11 without resolving any of the other privilege 12 issues, we are permitted to call Mr. Epstein 13 to the witness stand, have him assert his 14 Fifth Amendment privilege and to draw adverse 15 inferences from that, in spite of the 16 assertion of other privileges, that solves the 17 problem for us. 18 I don't think that is what he is telling 19 us, but if it is, that is fine, I don't have a 20 problem. They can assert every privilege in 21 the world as long as I get to draw an adverse 22 inference. So that's response number 1. 23 I want to deal with the argument that was 24 made with regard to the 1.370 motion 25 concerning requests for admissions number 12</p>
26	<p>1 question of how do you deal with it. I'm just 2 here to protect my client's Fifth Amendment 3 privileges. 4 THE COURT: Okay, thank you. 5 Mr. Scarola, briefly. 6 MR. SCAROLA: Yes, sir. I want to make 7 it very clear that we are not conceding the 8 validity of any Fifth Amendment privilege 9 assertion. 10 We are telling the Court that it is not 11 our intention to challenge Fifth Amendment 12 privilege assertions except to the extent that 13 it is necessary for Your Honor to make a 14 determination as to whether any other 15 privilege applies. To that extent we are 16 challenging the assertion of the Fifth 17 Amendment privilege as a bar to Your Honor 18 making a determination with regard to the 19 validity of other privilege assertions. 20 And the case law is very clear that Your 21 Honor is entitled to conduct an in camera 22 determination in order to do that if you find 23 that procedurally the raising of these 24 privilege assertions requires more than the 25 opportunities Your Honor has already given the</p>	28	<p>1 and 13. Does Your Honor have those requests 2 for admissions? 3 THE COURT: I'm not sure. I will look 4 here. 5 MR. SCAROLA: Let me hand this to you. I 6 will start with request number 13, which is 7 alleged to be a double negative. 8 Now, I don't know how it can be asserted 9 that that request somehow includes a double 10 negative and is unclear: "Admit that you have 11 never spent even one day in a state or federal 12 prison facility as opposed to a county jail as 13 punishment for any sex related crime." 14 Now, that request is clear and 15 unambiguous and is not a double negative. The 16 response that we got is clearly evasive. That 17 response is in the pleading that is just ahead 18 of the one that -- just ahead of the request 19 for admissions. The response is: "I admit 20 that I was sentenced by a state court judge to 21 the Palm Beach County Jail for charges to 22 which I pled." 23 That doesn't respond to whether he spent 24 a single day in a state or federal prison for 25 his crimes. That is clearly evasive. Rule</p>

<p style="text-align: right;">29</p> <p>1 1.370 deals directly with evasive responses 2 and says if the response is evasive the 3 request can be deemed admitted. We ask that 4 this request be deemed admitted. 5 Number 12: "Admit that you have never 6 paid even one penny in punitive damages to any 7 person who has alleged that you engaged in 8 improper sexual conduct with them while that 9 person was a minor." Now, Your Honor is well 10 aware of the fact that the payment of other 11 punitive damages arising out of the same 12 misconduct can be used as mitigation against a 13 punitive damage claim. 14 We are entitled to know whether 15 Mr. Epstein paid any other punitive damages to 16 anyone arising out of -- 17 THE COURT: Wait a minute. The punitive 18 damage claim in this case deals with the 19 claims against your client, not claims against 20 third parties out there for which, you know, 21 other people bringing sexual harassment 22 charges or conduct charges, but this is not 23 similar conduct. 24 MR. SCAROLA: The allegation in this case 25 is that the motive behind the charges brought</p>	<p style="text-align: right;">31</p> <p>1 Your Honor making a determination with regard 2 to the validity of all the other privilege 3 claims which on their face in many 4 circumstances appear absolutely absurd. 5 Thank you, sir. 6 THE COURT: Okay, I am going to have to 7 look at this a little closer and get some help 8 on it I think. I have never seen anything 9 like this before, so I will have to -- 10 MR. SCAROLA: I am happy to present you 11 with some unique legal challenges. 12 THE COURT: One of the good things about 13 this job is that a day doesn't go by where I'm 14 not presented with something I have never seen 15 before. 16 I just want to make sure I have all the 17 authorities of both sides, the memoranda or 18 the responses. 19 MS. COLEMAN: Judge, I have copies of the 20 U.S. Supreme Court cases. 21 THE COURT: Are they cited in your 22 memorandum? 23 MS. COLEMAN: They are, but I have copies 24 for everybody. 25 THE COURT: Yes, I will take copies.</p>
<p style="text-align: right;">30</p> <p>1 by Mr. Epstein against Mr. Edwards was to 2 avoid any civil liability, including any 3 punitive damage liability, arising out of his 4 earlier sexual misconduct. 5 It is reasonably calculated to lead to 6 admissible evidence with regard to that motive 7 to be able to talk to the jury about the 8 extent to which he has or has not been subject 9 to punitive damages in those prior claims 10 beyond which no objection was ever raised to 11 relevancy or materiality. 12 The objection is Fifth Amendment 13 privilege. That is the objection. That's the 14 objection that Your Honor is dealing with. 15 And that objection ought to be overruled. 16 There is no showing with regard to that 17 objection. 18 So the procedure that we have outlined, I 19 suggest to Your Honor, the procedural 20 alternatives are the procedural alternatives 21 that exist, and at the very least we are 22 entitled to have Your Honor conduct an in 23 camera inspection or assessment by way of 24 interview to determine whether any of these 25 Fifth Amendment privileges stand as a bar to</p>	<p style="text-align: right;">32</p> <p>1 MS. COLEMAN: I have copies for Mr. 2 Scarola as well. 3 MR. SCAROLA: Thank you. But I don't 4 need them. 5 MS. COLEMAN: And the other -- 6 MR. SCAROLA: As long as they are cited, 7 I don't need them. 8 THE COURT: Counsel, I have another 9 hearing. Just take them back there and 10 complete them and give them to the deputy 11 before you leave, okay? 12 MS. COLEMAN: Yes. 13 MR. GOLDBERGER: Thank you, Your Honor. 14 (Hearing concluded at 10:05 o'clock, 15 a.m.) 16 17 18 19 20 21 22 23 24 25</p>

CERTIFICATE OF REPORTER

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I, Roger Watford, Florida Professional Reporter, certify that I was authorized to and did stenographically report the foregoing proceedings and that the transcript is a true and complete record of my stenographic notes.

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

Dated this 4th day of April, 2013.



Roger Watford, FPR/RPR 



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