

JEFFREY EPSTEIN v. SCOTT ROTHSTEIN - Vol. I

November 2, 1990

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

5 JEFFREY EPSTEIN,

6 Plaintiff,

7 vs.

8 SCOTT ROTHSTEIN, et al.,
9 Defendants.

10 _____/
11 TRANSCRIPT OF HEARING

12 Volume 1 of 1

13 Pages 1 - 33

14 DATE: Monday, April 22, 2013
15 TIME: 9:30 o'clock, a.m.
16 PLACE: Palm Beach County Courthouse
17 ████████████████████
18 West Palm Beach, Florida 33401
19 BEFORE: Honorable David F. Crow,
20 Circuit Court Judge

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

24 Roger Watford, RPR/FPR
25 U.S. Legal Support, Inc.
26 ████████████████████

27 West Palm Beach, Florida 33401



1 APPEARANCES:

2 FOR THE PLAINTIFF/COUNTER-DEFENDANT:

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8 [REDACTED]

9 BY: TONJA HADDAD COLEMAN, ESQ.

10 -and-

11 ATTERBURY, GOLDBERGER & WEISS, P.A.

12 [REDACTED]

13 West Palm Beach, Florida 33401

14 [REDACTED]

15 [REDACTED]

16 BY: JACK GOLDBERGER, ESQ.

17

18

19 FOR THE DEFENDANT/COUNTER-PLAINTIFF:

20

21 SEARCY, DENNEY, SCAROLA, BARNHART
22 & SHIPLEY

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24 West Palm Beach, Florida 33409

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BY: JACK SCAROLA, ESQ.

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1 The above-styled cause came on for
2 hearing before the Honorable David F. Crow,
3 Circuit Court Judge, at the Palm Beach County
4 Courthouse, [REDACTED] West Palm
5 Beach, Florida, on April 22, 2013, commencing
6 at 9:30 o'clock, a.m., as follows:

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

15 MR. SCAROLA: May I approach, Your
16 Honor?

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

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

25 I have prepared for Your Honor what I

1 hope will be of some assistance in getting
2 through this matter, and it is an outline of
3 the procedural history of our efforts to
4 obtain financial discovery, which began almost
5 exactly to the day four months ago on December
6 21, 2012. That's when we served the request
7 for production and the interrogatories that
8 are the focus of the motion to overrule all
9 claims of privilege other than claims of Fifth
10 Amendment privilege and to impose sanctions.
11 We also served I believe at that same time our
12 request for admissions that are the subject of
13 our motion pursuant to Rule 1.370 to deem the
14 request for admissions admitted for failure to
15 file proper responses. Those are basically
16 the two matters before the Court. There are
17 competing memoranda, but the motions giving
18 rise to the issues are those two motions.

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

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

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

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

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

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

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.

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

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

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

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

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,

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

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

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

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

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

1 production that are applicable in a post-
2 judgment context.

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 --

19 THE COURT: Nobody has moved to
20 bifurcate, have they?

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.

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.

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.

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.

25 MR. GOLDBERGER: Thank you, Your Honor,

1 for allowing us to split this issue and having
2 two lawyers.

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.

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."

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?

24 I mean, it looks like on the face of it
25 some of these privileges, you know, the third

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?

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.

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.

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

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

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

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

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

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

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.

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.)

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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

