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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.

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11

12 TRANSCRIPT OF HEARING

13 Volume 1 of 1

14 Pages 1 - 33

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

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

22

23 Roger Watford, RPR/FPR  
24 U.S. Legal Support, Inc.  
25 [REDACTED]  
26 West Palm Beach, Florida 33401  
27 [REDACTED]

25

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1 APPEARANCES:  
2 FOR THE PLAINTIFF/COUNTER-DEFENDANT:  
3 LAW OFFICES OF TONJA HADDAD COLEMAN,  
4 P.A.

4

5 [REDACTED]  
6 Fort Lauderdale, Florida 33301  
7 [REDACTED]

5

6

8 BY: TONJA HADDAD COLEMAN, ESQ.

6

9 -and-

7

10 ATTERBURY, GOLDBERGER & WEISS, P.A.

8

11 [REDACTED]  
12 West Palm Beach, Florida 33401  
13 [REDACTED]

9

10

11 BY: JACK GOLDBERGER, ESQ.

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13 FOR THE DEFENDANT/COUNTER-PLAINTIFF:

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SEARCY, DENNEY, SCAROLA, BARNHART  
& SHIPLEY

West Palm Beach, Florida 33409

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, ██████████ 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

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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

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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

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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

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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

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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

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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

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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.

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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

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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

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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

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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 v. 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

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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,

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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

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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

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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

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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

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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

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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.

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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,  
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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

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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.

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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

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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  
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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  
0028

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  
0029

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

0030

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

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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.

0032

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

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 4th day of April, 2013.  
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21 Roger Watford, FPR/RPR

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