

IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT IN
AND FOR PALM BEACH COUNTY,
FLORIDA

Case No. 50-2009CA040800XXXXMBAG

JEFFREY EPSTEIN,

Plaintiff/Counter-Defendant,

v.

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

Defendants/Counter-Plaintiff.

**JEFFREY EPSTEIN'S RESPONSES AND OBJECTIONS TO
NOTICE OF TAKING VIDEO DEPOSITION DUCES TECUM**

Plaintiff/Counter-Defendant Jeffrey Epstein ("Epstein"), pursuant to Florida Rule of Civil Procedure 1.350(b), responds and objects to the Dukes Tecum contained in Counter-Plaintiff Bradley J. Edwards' ("Edwards") June 20, 2018, Notice of Taking Video Deposition Dukes Tecum, and states:

THE LIMITED SCOPE OF EPSTEIN'S DEPOSITION

On May 23, 2018, the Court held a hearing on Edwards' Motion to Permit him to Take the Limited Deposition of Epstein. (**Exhibit A** - Transcript). While the Court has not yet entered an Order, it granted Edwards' request to take Epstein's deposition on the following limited topics:

- Whether and to what extent Epstein reviewed any of the alleged privileged materials prior to March 2018. (**Exhibit A**, 19:7-12.)
- Whether and to what extent Epstein reviewed any of the alleged privileged materials after March 2018. (**Exhibit A**, 19:7-12.)

- Whether Epstein has any knowledge regarding compliance with the Court's verbal rulings on the record at the March 8, 2018, hearing regarding destruction of those documents Edwards has claimed are privileged. (**Exhibit A**, 19:13-18.)
- Whether and to what extent Epstein has shared any of the alleged privileged materials with anyone other than his attorneys. (**Exhibit A**, 19:19-22.)
- Which, if any, of the alleged privileged materials Epstein plans to use to testify at trial. (**Exhibit A**, 19:22-20:2.)

While the Court has allowed Epstein's limited deposition, document discovery was **not** addressed by the parties or the Court at the hearing and, in fact, discovery is closed.

EDWARDS' DUCES TECUM

Edwards' Duces Tecum requests Epstein to produce:

All communications and all records relating to all communications concerning or containing information derived from documents or data over which a claim of privilege was asserted by or on behalf of Bradley J. Edwards.

* "Documents" shall include, but not be limited to all non-identical copies of writings, drawings, graphs, charts, photographs, phono-records, recordings, and/or any other data compilations from which information can be obtained, translated, if necessary, by the party to whom the request is directed through detection devices into reasonably usable form. "Documents" also include all electronic data as well as application metadata and system metadata. All inventories and rosters of your information technology (IT) systems—e.g., hardware, software and data, including but not limited to network drawings, lists of computing devices (servers, PCs, laptops, PDAs, cell phones, with data storage and/or transmission features), programs, data maps and security tools and protocols.

Edwards seeks: (1) documents that are protected by the attorney-client privilege; (2) documents that have been sealed; and (3) access to Epstein's computers and electronic devices.

EPSTEIN'S RESPONSE AND OBJECTION

A. General Response.

Epstein's current trial counsel, Link & Rockenbach, PA, received the disc which is the subject of Epstein's deposition from Epstein's former counsel, Fowler White, in February 2018. Epstein never received the disc nor did he know of the disc's existence before that time.

At the March 8, 2018 hearing, this Court directed the parties to seal the disc and ensure no further dissemination of the documents Edwards claimed were privileged. Link & Rockenbach, PA, took immediate steps to comply with this Court's March 8, 2018, directives as set forth in Epstein's Notices of Compliance. The disc has been sealed and Edwards' privilege claims are currently the subject of Epstein's request that the Court conduct an *in camera* review to make a determination as to whether the documents are privileged as claimed by Edwards.

In any event, Epstein objects to the *Duces Tecum* because discovery is closed and Edwards did not obtain permission to reopen discovery for any purpose other than to take Epstein's limited deposition. Epstein also objects because the *Duces Tecum* seeks documents and information protected by the attorney-client privilege and work product doctrine and are not relevant to the limited issues of the deposition.

B. The Duces Tecum Seek Privileged, Protected and Sealed Documents

Notwithstanding that document discovery has not been reopened, even if the Court allowed the discovery the scope of permissible discovery in civil cases is set by Florida Rule of Civil Procedure 1.280(b):

Unless otherwise limited by order of the court in accordance with these rules, the scope of discovery is as follows: . . . Parties may obtain discovery regarding any matter, **not privileged**, that is **relevant** to the subject matter of the pending action[.]

Fla. R. Civ. P. 1.280(b)(1) (emphasis added).

The sweepingly broad nature of the request—**all communication and all records relating to all communications**—inappropriately requires disclosure of documents protected by the attorney-client privilege and/or work product doctrine, as well as documents which have been (and remain) sealed by Order of this Court or destroyed at the Court’s direction.

Under Florida law, “[a] client has a privilege to refuse to disclose, and to prevent any other person from disclosing, the contents of confidential communications when such other person learned of the communications because they were made in the rendition of legal services to the client.” § 90.502(2), Fla. Stat. “The purpose of the attorney-client privilege is to encourage clients to make full disclosure to their attorneys,” and “protects . . . those disclosures necessary to obtain informed legal advice.” *Fisher v. United States*, 425 U.S. 391, 403 (1976).

The work-product privilege is set forth in Florida Rule of Civil Procedure 1.280, which states work product is discoverable only upon a showing of undue hardship and need, although mental impressions or legal opinions are always protected:

(4) *Trial Preparation: Materials*. Subject to the provisions of subdivision (b)(5) of this rule, a party may obtain discovery of documents and tangible things otherwise discoverable under subdivision (b)(1) of this rule and **prepared in anticipation of litigation or for trial** by or for another party or by or for that party’s representative, including that party’s attorney, consultant, surety, indemnitor, insurer, or agent, *only upon a showing that the party seeking discovery has need of the materials in the preparation of the case and is unable without undue hardship to obtain the substantial equivalent of the materials by other means*. In ordering discovery of the materials when the required showing has been made, *the court shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories* of an attorney or other representative of a party concerning the litigation.

Butler v. Harter, 152 So. 3d 705, 711 (Fla. 1st DCA 2014) (citing Fla. R. Civ. P. 1.280(b)(4) (bold/underline emphasis added).

Here, the information requested by Edwards, on its face, is protected by both the attorney-client privilege and work product doctrine. While not all communications between lawyer and client are deemed privileged, a request for “all communications,” as Edwards makes here, necessarily includes information that is confidential and attorney-client privileged. And, as required to assert the work product protection, at least one reason for obtaining or preparing any such materials and data was in anticipation of this litigation or for trial. *See Marshalls of MA, Inc. v. Minsal*, 932 So. 2d 444, 448 (Fla. 3d DCA 2006) (“As there is substantial competent record evidence that the incident reports in question were prepared in anticipation of foreseeable litigation, which is uncontroverted by any competent evidence, we conclude that the trial court’s finding that the reports were not protected by work product, is unsupported by the record and departs from the essential requirements of the law in this jurisdiction. The fact that there was evidence that the reports may also have been prepared in order for [the defendant] to identify areas of concern does not alter this finding, as it does not eliminate the work product privilege.”) (emphasis added; citation omitted); *Federal Express Corp. v. Cantway*, 778 So. 2d 1052, 1053 (Fla. 4th DCA 2001) (indicating that documents keep their work product protection even if they were prepared for an additional reason not in anticipation of litigation as long as the anticipation of litigation was *one* of the reasons for preparing the documents).

C. Edwards’ Request for Electronic Data is an Invasion of Epstein’s Privacy and Seeks Irrelevant, Confidential and Privileged Information

Finally, Epstein objects to Edwards’ request as to “all electronic data as well as application metadata and system metadata. All inventories and rosters of your information technology (IT) systems—e.g., hardware, software and data, including but not limited to network drawings, lists of computing devices (servers, PCs, laptops, PDAs, cell phones, with data storage and/or transmission features), programs, data maps and security tools and protocols.” Such a

request is an invasion of Epstein's privacy, seeks irrelevant and confidential information, is overly broad, could result in the inadvertent disclosure of attorney-client privilege information and attorney work product, and is far outside the scope of the Court's oral ruling.

Edwards seeks unprecedented access into Epstein's computer systems and electronic devices which in no way supports his claim for damages. As the First District has explained:

Generally speaking, Florida Rule of Civil Procedure 1.280 allows for the discovery of matters that are relevant and admissible, or reasonably calculated to lead to admissible evidence, including electronically stored information. *See* Fla. R. Civ. P. 1.280(b)(1), (b)(3), 1.350 (2013); *see also* Fla. R. Civ. P. 1.280(d) (addressing limitations on the discovery of electronically stored information). But **where personal information is involved as in this case, the trial courts' discretion to permit discovery "must be balanced against the individual's competing privacy interests to prevent an undue invasion of privacy."** *McEnany v. Ryan*, 44 So. 3d 245, 247 (Fla. 4th DCA 2010). **Courts have reversed rulings for not adequately accounting for privacy interests in the inspection of electronic storage devices.** *See, e.g., Holland [v. Barfield]*, 35 So. 3d [953,] 955 [Fla. 5th DCA 2010] (reversing an order allowing the inspection of a computer hard drive and cellphone SIM card); *Menke v. Broward Cnty. Sch. Bd.*, 916 So. 2d 8, 12 (Fla. 4th DCA 2005) (reversing an order allowing the inspection of all computers in a household).

. . . privacy rights do not completely foreclose the prospect of discovery of data stored on electronic devices. Rather, limited and strictly controlled inspections of information stored on electronic devices may be permitted. *See Menke*, 916 So. 2d at 11 ("**Rule 1.350 is] broad enough to encompass requests to examine [electronic information storage devices] but only in limited and strictly controlled circumstances**"); *cf. Friedman v. Heart Inst. of Port St. Lucie, Inc.*, 863 So. 2d 189, 194 (Fla. 2003) (finding that privacy rights limit compelled disclosure to that which is necessary to determine contested issues). Both *Holland* and *Menke*, for instance, would have allowed for inspections of the devices involved (computers and cellphones) if: (1) there was evidence of destruction of evidence or thwarting of discovery; (2) the device likely contained the requested information; and (3) no less intrusive means existed to obtain the requested information. *Holland* 35 So. 3d at 955; *Menke*, 916 So. 2d at 12.

Antico v. Sindt Trucking, Inc., 148 So. 3d 163, 166 (Fla. 1st DCA 2014) (emphasis added).

Here, access to Epstein's computer systems and electronic devices should **not** be allowed absent any evidence whatsoever that Epstein destroyed any materials (other than as directed by this Court) or thwarted discovery, and because his devices are unlikely to contain the requested information. Far less intrusive means of discovery – Epstein's limited deposition, as the Court permitted -- should be the only discovery allowed.

CERTIFICATE OF SERVICE

I certify that the foregoing document has been furnished to the attorneys listed on the Service List below on July 18, 2018, through the Court's e-filing portal pursuant to Florida Rule of Judicial Administration 2.516(b)(1).

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EXHIBIT A

NOT A CERTIFIED COPY

IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT, IN
AND FOR PALM BEACH COUNTY, FLORIDA

Case No. 502009CA040800XXXXMB

JEFFREY EPSTEIN,

Plaintiff/Counter-Defendant,

vs.

SCOTT ROTHSTEIN, individually;
BRADLEY EDWARDS, individually,

Defendants/Counter-Plaintiffs.

TRANSCRIPT OF PROCEEDINGS

DATE TAKEN: Wednesday, May 23rd, 2018
TIME: 9:00 a.m. - 9:18 a.m.
PLACE 205 N. Dixie Highway, Room 10D
West Palm Beach, Florida
BEFORE: Donald Hafele, Presiding Judge

This cause came on to be heard at the time and
place aforesaid, when and where the following
proceedings were reported by:

Sonja D. Hall
Palm Beach Reporting Service, Inc.
1665 Palm Beach Lakes Boulevard, Suite 1001
West Palm Beach, FL 33401
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1
2 APPEARANCES:

3 For Plaintiff/Counter-Defendant:

4 LINK & ROCKENBACH, P.A.
5 1555 Palm Beach Lakes Boulevard, Suite 301
6 West Palm Beach, FL 33401
By KARA BERARD ROCKENBACH, ESQUIRE
By SCOTT J. LINK, ESQUIRE

7 For Defendant/Counter-Plaintiff:

8 SEARCY, DENNEY, SCAROLA, BARNHART &
9 SHIPLEY, P.A.
2139 Palm Beach Lakes Boulevard
West Palm Beach, FL 33409
10 By DAVID P. VITALE JR., ESQUIRE
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1 MR. VITALE: Good morning, Your Honor.

2 MS. ROCKENBACH: Good morning, Your
3 Honor.

4 THE COURT: Good morning. We are back
5 on a motion by Edwards to take a limited
6 deposition of Mr. Epstein. I have read as
7 much as material as I could, including most
8 of the transcript of the proceeding that
9 transpired in front of Judge Ray, the
10 bankruptcy judge who did allow the
11 deposition to be taken.

12 And I presume it's going to be taken by
13 members of your office, Mr. Vitale.

14 MR. VITALE: Yes, sir.

15 THE COURT: So what did you need beyond
16 what Judge Ray has authorized?

17 MR. VITALE: What Judge Ray has
18 authorize is a deposition related to
19 Mr. Epstein's possession of the disc.

20 What we are concerned with is
21 enforcement of Your Honor's order regarding
22 the 724 filed exhibits that you have
23 stricken for use at trial. Forty-seven of
24 those, at least, are privileged documents
25 that were listed on our privilege log since

1 2010.

2 Now through the court filings that's
3 been made in the recent months there's been
4 two representations.

5 The first representations is that
6 Mr. Epstein, as an individual, as a witness,
7 did not review or become aware of the
8 privileged materials until March of 2018.

9 So at a minimum, even if they weren't
10 already stricken, they would be irrelevant
11 from a probable cause determination because
12 they could not have led to a probable cause
13 to initiate the lawsuit in 2009 and continue
14 until 2012.

15 The second representation that has been
16 made is that Mr. Epstein was provided a
17 subset of the privileged documents which he
18 did review prior to our March 5th trial
19 date.

20 THE COURT: How much prior?

21 MR. VITALE: My understanding -- and
22 I'm sure Mr. Link or Ms. Rockenbach can
23 correct me if I'm wrong -- it would have
24 been within weeks prior to the original
25 March 13th trial date. He was provided a

1 subset of the documents.

2 Now, what we are concerned about is
3 that although there's been representations
4 in court filings that Mr. Epstein was
5 ordered by this trial court to destroy the
6 records, there's been no affidavit or
7 evidence put forth that he has complied with
8 that order.

9 THE COURT: Who is he?

10 MR. VITALE: He being Mr. Epstein, sir.

11 We do not know what privileged material
12 Mr. Epstein reviewed. We do not know the
13 depth of his review. We do not know who he
14 may have shared those privileged materials
15 with.

16 Now, I don't make any suggestion that
17 opposing counsel will knowingly put a
18 third-party witness on the stand with
19 evidence -- that had knowledge of our
20 privileged materials. But if Mr. Epstein
21 gave privileged materials to the third-party
22 witness, that could occur.

23 So what we would like to be able to do
24 is take a very limited deposition.

25 Mr. Epstein is already going to be in Palm

1 Beach County. We would like to know what
2 privileged materials he reviewed. Again,
3 these are privileged materials that have
4 been on our privileged log since 2010. We
5 would like to know the timing of that
6 review. We would like to know whether he
7 still possesses the privileged materials, or
8 whether he has complied with the Court's
9 order.

10 And the reason, Your Honor, is because
11 if Mr. Epstein on the witness stand starts
12 giving answers that go to his knowledge of
13 privileged materials, we need to be in a
14 position to object, move to strike. And
15 Your Honor needs to be in a position to be
16 able to timely rule on those objections or
17 motions.

18 Right now we simply don't know what he
19 knows. We don't know what privileged
20 materials he has.

21 THE COURT: How do you see that as
22 going beyond Judge Ray's order? In other
23 words, essentially three areas of inquiry
24 whether Mr. Epstein reviewed any of the
25 documents prior to March 8th, 2018, I

1 believe would be encompassed in Judge Ray's
2 order by permitting the limited deposition.
3 Whether he did or didn't comply with the
4 Court's order of destroying the records,
5 would be essentially a very, very limited
6 inquiry that may touch on Judge Ray's order
7 allowing a limited deposition.

8 Did he share any privileged materials
9 with anyone other than -- from what I
10 recall, Mr. Link's representations -- or
11 Mr. Link and Ms. Rockenbach and/or
12 Mr. Goldberger -- again, I think is
13 encompassed fairly within Judge Ray's scope
14 of allowing the limited deposition.

15 So let me hear -- so is there anything
16 else that you want to add, other than the
17 three areas that I've covered? Maybe I
18 missed an area that you had mentioned.

19 MR. VITALE: Yes, sir. The
20 clarification I would make is that those
21 three areas, I would term them procedural.
22 It's simply when did he review? Did he
23 share them? What we are looking for is an
24 ability at this trial to enforce the Court's
25 order to ensure that nothing comes through

1 the backdoor that isn't allowed through the
2 front door; is to understand the substance
3 of what exactly -- which privileged
4 materials that he reviewed, which privileged
5 materials he may attempt to utilize in
6 answers to questions in an attempt to get
7 privileged materials in through the
8 backdoor.

9 If he reviewed them, let's say,
10 February 26th, I need to know what he
11 reviewed so I can understand his answers on
12 the stand, and Mr. Scarola or I could be in
13 a position -- or Ms. Terry -- to object and
14 to move to strike and say, Judge, we took
15 his deposition on June 30th, and question
16 and answer on what he reviewed and here is
17 what he told us he reviewed. You can see
18 the answer he just gave is derived from the
19 privileged materials that he is not
20 permitted to use under this Court's orders.
21 That would be --

22 THE COURT: Do we even know if he is
23 going to testify at trial in this case?

24 MR. VITALE: There's been no
25 clarification. We are proceeding as if he

1 will be testifying. We have been not been
2 told definitively that he is not.

3 THE COURT: Ms. Rockenbach?

4 MS. ROCKENBACH: Thank you, Your Honor.
5 Kara Rockenbach on behalf of Jeffrey
6 Epstein. Your Honor hit the nail on the
7 head.

8 First point. There are four reasons
9 why this court should deny Mr. Edwards'
10 motion. And the first one is squarely what
11 Your Honor pointed out, which is this is a
12 matter before the bankruptcy court.

13 Bankruptcy Judge Ray has already issued
14 an order. And you are correct, the
15 deposition of Mr. Epstein is going forward
16 to determine --

17 THE COURT: Have you set a date yet?

18 MR. LINK: Your Honor, we have
19 exchanged four or five different dates. We
20 have six counsels, so we don't have a date
21 set. But the evidentiary hearing in front
22 of Judge Ray is in August, so the depo will
23 take place before then, Judge.

24 THE COURT: Thanks.

25 MS. ROCKENBACH: So that's the first

1 reason why. And that alone should allow
2 this Court to deny this request that really
3 has no other purpose.

4 The second reason is none of the
5 materials about which Mr. Edwards seeks to
6 depose Mr. Epstein about have even been
7 determined by this Court to be privileged or
8 not. We have requested an in-camera
9 instruction of these documents. So there
10 hasn't even been a determination of
11 privilege.

12 Number three, Mr. Scarola's -- or
13 Vitale's stated purpose in the motion and
14 then here before Your Honor makes no sense.
15 The purpose or the alleged justification to
16 take Mr. Epstein's deposition in this case
17 is pursuant to the motion that they filed to
18 allow Edwards to identify and object to at
19 trial all attempts by Epstein to utilize
20 privileged materials, these are very
21 skilled, able trial lawyers. They know how
22 to object. They do not need to take
23 Mr. Epstein's deposition to determine what
24 objections they should make at trial.

25 And the second or corollary reason that

1 was stated in the motion -- stated again
2 this morning -- is they need Mr. Epstein's
3 deposition in order for this Court to know
4 how to rule at trial on the admissibility of
5 evidence. Your Honor is well capable of
6 enforcing your own orders and rulings, and
7 so those stated reasons just have no merit.

8 But the last and most significant
9 reason that is important -- because I don't
10 think Your Honor has seen it yet -- if I may
11 approach?

12 Mr. Link and I filed two notices of
13 compliance with the Court.

14 MR. VITALE: May I have a copy?

15 MS. ROCKENBACH: I'm sorry. The notice
16 of compliance that Counsel referred to this
17 morning.

18 MR. LINK: There are two copies there.

19 THE COURT: I have two copies. They
20 are not of the same thing.

21 MR. LINK: I think there are copies of
22 each.

23 MS. ROCKENBACH: Sorry about that.

24 THE COURT: No. That's okay. I got
25 you.

1 MS. ROCKENBACH: But these are the
2 notices of compliance that we have filed.

3 Your Honor, we went above and beyond
4 because this court has not actually entered
5 a written order on Edwards' motion to strike
6 the exhibits or deemed them privileged.

7 THE COURT: That hasn't been before me.
8 That hasn't been argued yet, has it?

9 MS. ROCKENBACH: It was. It was the
10 March 8th hearing where these exhibits came
11 to light and we discussed them. And Your
12 Honor made specific oral rulings and we
13 detailed them in those two notices of
14 compliance. There was no objection filed by
15 Mr. Edwards whatsoever about our detailed --
16 and we cited to the hearing transcript to be
17 completely accurate with Your Honor's
18 rulings.

19 So there was never a requirement by
20 Your Honor that we certify compliance with
21 the rulings. Your Honor took our word as
22 officers of the court as to how we handled
23 the document. And then we went further to
24 assist and cooperate, without court order,
25 to seal the documents and then further to

1 destroy the documents.

2 And those two notices of compliance
3 identify -- I think there are 14 bullet
4 points and --

5 THE COURT: So you've destroyed all the
6 documents? What is the position being taken
7 relative to their admissibility, some or
8 all?

9 MS. ROCKENBACH: We are waiting for --
10 Your Honor has indicated that you are giving
11 us special set time on, I think, the July
12 trial docket. And one of the issues is the
13 motion for in camera for Your Honor to
14 determine.

15 THE COURT: That's going to be firmed
16 up now. I know I told you that I might be
17 able to find some time. I don't think
18 that's going to happen. So somebody should
19 send out a notice of hearing that puts you
20 on this July 2 docket with a June 22 trial
21 docket calendar call. It runs from July 2nd
22 to September 7th. So do that formally so
23 that we can get you on there formally.

24 MR. LINK: Your Honor, can I comment on
25 the non-written order so the Court

1 understands what happened?

2 THE COURT: Okay.

3 MR. LINK: As much as I hate to raise
4 the subject, the reason the Court didn't
5 enter an order is because of the stay and --

6 MR. VITALE: Competing orders were
7 submitted.

8 MR. LINK: Yeah, competing orders were
9 submitted, but then the case was stayed,
10 Your Honor. So it's not as though you were
11 not going to enter an order on your oral
12 rulings, but we went ahead and complied with
13 your oral rulings anyway. That's why we
14 don't have a written order, Judge.

15 THE COURT: I don't remember -- I
16 shouldn't say I don't remember -- there's so
17 much going on -- this may be what you're
18 talking about. What I try to do with breaks
19 and video depositions and things like that in the
20 trial is try and go through some of this
21 stuff and get some work done.

22 That's the competing orders on motion
23 to strike Epstein's untimely supplemental --

24 MR. LINK: Yes, Your Honor.

25 MS. ROCKENBACH: That's it.

1 THE COURT: Does the timeliness
2 issue -- is that still -- becomes an issue
3 or is that moot?

4 MS. ROCKENBACH: It's moot.

5 MR. VITALE: It's not moot, Your Honor.
6 It's still an issue.

7 THE COURT: I guess I can enter the
8 order, but then it can be dealt with
9 otherwise, I presume.

10 MR. LINK: Your Honor, I can tell you
11 we have fully complied with the Court's
12 ruling, and we believe all these issues are
13 teed up again through Mr. Vitale's office
14 and our office for the hearings in July. I
15 think the Court will see all of these issues
16 again at those hearings.

17 THE COURT: That was just an extra copy
18 with submission to the Court. I don't need
19 it.

20 MS. ROCKENBACH: So just to close, Your
21 Honor, Judge Ray has already addressed the
22 issue, and it is not necessary for
23 Mr. Epstein to be deposed any broader than
24 Judge Ray has already indicated.

25 And, in fact, Your Honor, as you went

1 through the three items expressed by
2 Plaintiff's Counsel, Judge Ray is addressing
3 that. So to have Mr. Epstein be deposed so
4 that Counsel can determine what trail
5 objections to make or how this Court should
6 rule on admissibility is not the subject of
7 a motion for a deposition or another
8 deposition of Mr. Epstein.

9 If it is, in fact, about compliance,
10 well then, it would have been titled a
11 motion to seek determination whether we
12 complied with the Court's rulings.

13 We have. And that's why I submitted to
14 Your Honor the two notices of compliance
15 which Your Honor didn't request those,
16 didn't order those. We did that, really,
17 just to show our good faith in compliance
18 with the Court's oral rulings.

19 So we ask that Your Honor deny the
20 request to take another deposition of
21 Mr. Epstein.

22 THE COURT: Thank you.

23 Last word.

24 MR. VITALE: Yes, Your Honor. This is
25 not an admissibility issue. We understand

1 that Your Honor is more than capable of
2 determining which of the 47 privileged
3 documents are admissible based on Your
4 Honor's current order. They are not
5 admissible.

6 I have no qualms -- and I'm not
7 standing here suggesting that Mr. Link or
8 Ms. Rockenbach are going to attempt to admit
9 exhibits that you have ruled are
10 inadmissible.

11 Our concern is that Mr. Epstein, as a
12 party, has reviewed a subset of our
13 privileged materials, privileged materials
14 that have been listed on our privilege log
15 for eight years.

16 Our concern is that, on the witness
17 stand in response to questions, he will
18 utilize knowledge that he gained from the
19 privileged materials he has reviewed in
20 order to get that evidence in through the
21 backdoor that Your Honor will not allow in
22 through the front door.

23 The only way for Mr. Scarola or myself
24 or Ms. Terry to properly object is to know
25 what specific subset of privileged materials

1 he's reviewed so I can understand when he
2 gives an answer, we can object and we can
3 point you to a deposition transcript saying,
4 Your Honor, we asked him what he reviewed.
5 Here is what he reviewed. We asked him if
6 he had any other knowledge of this topic
7 outside of privileged materials, he said,
8 No. That testimony should be stricken and
9 the witness should be admonished.

10 So it's not an issue of admissibility.
11 It's our ability to identify what he's
12 reviewed to prevent these things. As Your
13 Honor has said, they're not coming in
14 through the front door. And your Honor made
15 it clear in the oral ruling on March 8th
16 that they will not come in through the
17 backdoor. We need to understand what he's
18 reviewed in order to make those objections.

19 THE COURT: Well, based upon the fact
20 that there is going to be, at least from my
21 perception and my limited exposure to these
22 emails, a continued insistence, I will
23 presume by Mr. Epstein, on the utilization
24 of some of those emails; and the fact that
25 these emails have come to light subsequent

1 to the trial court -- my orders relative to
2 not permitting the floodgates to open and,
3 again, with respect to discovery that should
4 have been taken prior -- here I don't
5 believe that's something that would be
6 subject to that order, meaning, consistent
7 with Judge Ray's ruling -- I too will allow
8 Mr. Epstein to be -- on a limited basis --
9 questioned regarding his review of any of
10 the documents in question prior to
11 March 18th or subsequent thereto to the
12 present time.

13 Whether or not he has any knowledge
14 regarding the compliance of the Court's
15 order regarding destroying of the records,
16 that's not necessarily going to be
17 admissible at trial, although I think it's
18 discoverable.

19 Whether or not he shared any of the
20 allegedly privileged materials with anyone
21 other than Mr. Link, Ms. Rockenbach or
22 Mr. Goldberger; and which, if any, materials
23 he plans to use to testify at trial, if he
24 so testifies, the last issue can be avoided
25 if there is a representation on the record

1 that Mr. Epstein will not testify at any
2 trial proceedings in this case.

3 However, absent such a stipulation, he
4 will be compelled to answer questions as to
5 what, if any, of those materials he plans to
6 use, even if he doesn't have those materials
7 in his possession any longer. It would be
8 based upon his review.

9 So that would be the limited areas of
10 inquiry that I would allow in conjunction
11 with Judge Ray, and to be consistent,
12 essentially, with the spirit and intent of
13 Judge Ray's ruling, as well as a corollary
14 to what we are looking for in this
15 particular case relative to those materials.

16 So, if you can, in preparing an order,
17 Mr. Vitale, track the Court's ruling, I
18 would appreciate it.

19 I wish you all a very pleasant rest of
20 the week.

21 Is there anything else that's
22 remaining, because I think there were two
23 hearings that were set? Is there something
24 else? This is it?

25 MR. LINK: I believe this is the only

1 one, Your Honor.

2 THE COURT: Thank you for your
3 respective participation and arguments. I
4 appreciate that very much. Thank you.

5 - - -

6 (The above proceedings were
7 concluded at 9:18 a.m.)

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1 COURT CERTIFICATE

2
3
4 STATE OF FLORIDA)
: SS
5 COUNTY OF PALM BEACH)
6

7 I, SONJA D. HALL, certify that I was
8 authorized to and did stenographically report the
9 foregoing proceedings and that the transcript is a
10 true record of my stenographic notes.
11

12
13 Dated this 31st day of May 2018.
14
15

16 _____
SONJA D. HALL
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