

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.

**PLAINTIFF/COUNTER-DEFENDANT JEFFREY EPSTEIN'S
RESPONSE IN OPPOSITION TO EDWARDS' MOTION FOR SANCTIONS
FOR VIOLATION OF COURT ORDER AND THE INTERVENORS' JOINDER**

Plaintiff/Counter-Defendant Jeffrey Epstein ("Epstein") responds in opposition to Counter-Plaintiff Bradley J. Edwards' ("Edwards") April 3, 2018, Motion for Sanctions for Violation of Court Order¹, and the Intervenors' April 7, 2018, Joinder and states:

INTRODUCTION

In order to justify his Motion for Sanctions, Edwards concocts a patently absurd construction of this Court's verbal ruling on March 8, 2018, asserting that Epstein was prohibited from referring, in any way, to the 27,000+ pages contained on the Fowler White CD. His claim is that Epstein violated this Court's ruling the four times Epstein "referenced" the documents at issue, in one filing with this Court and three filings with the Fourth District Court of Appeal. Edwards' Motion is just another attempt to derail an *in camera* review of documents wrongfully withheld by Edwards, which review is critical to ensure a fair and complete examination of all relevant

¹A written Order has not been issued on the Court's March 8, 2018, rulings.

evidence in this case. Edwards wants to gag Epstein and prevent him from being able to seek appellate review concerning the Court's striking of the exhibits (a review which this Court expressly contemplated as part of its ruling)² or defend himself in the Bankruptcy Court proceedings initiated by Edwards. In addition, under a gag ruling, Edwards, himself, would be in violation of the Court's ruling by his reference to the e-mails in filings in this Court, the Appellate Court and the Bankruptcy Court. In fact, Epstein has taken numerous affirmative steps to ensure compliance with the Court's directives at the March 8, 2018 hearing. The disc is sealed, the 47 exhibits (also referred to as "e-mails") are sealed and no further dissemination by Epstein or his attorneys has occurred. And Epstein's general references to the e-mails in connection with requests to this Court and the Fourth District Court of Appeal for judicial relief certainly comply with the Court's rulings and provide no basis for sanctions.

The Bankruptcy Court's November 2010 Agreed Order, issued by the Honorable Raymond B. Ray (the "November 2010 Agreed Order"), contains no confidentiality or non-disclosure provisions and does not, itself, prohibit the general references to the e-mails about which Edwards complains. The November 2010 Agreed Order merely described the procedure by which Fowler White would print copies of documents to be produced in response to Epstein's Subpoena directed to the Bankruptcy Trustee and directed Fowler White not to retain any copies of the documents contained on the disc or any images of the documents in the memories of its copiers. Whether or not Fowler White and/or Epstein complied with that directive is squarely and appropriately before the court that issued the Order – the United States Bankruptcy Court for the Southern District of Florida.

²See March 8, 2018, Afternoon Hearing Transcript, 62:6-12 (Court allowed Epstein to file the exhibits under seal to protect his appellate rights). (**Exhibit A.**)

Following a preliminary hearing on Edwards' Motion for an Order to Show Cause held on April 13, 2018 in the Bankruptcy Court, Judge Ray ordered discovery that is focused on the allegations of federal civil contempt relating to the alleged violations of the November 2010 Agreed Order. Specifically, Edwards may take the depositions of (1) Fowler White's representative about the chain of custody of the discovery documents; (2) Epstein about his knowledge or possession of the disc or documents pre-2018; and (3) Link & Rockenbach, PA's representative about the chain of custody of the disc. The Bankruptcy Court determined that its role is only to review whether Fowler White or Epstein retained any copies of the documents contained on the disc or any images of the documents in the memories of Fowler White's copiers. Issues pertaining to the relevance of the documents contained on the disc or the applicability of any privileges to those documents are well outside both the scope of the November 2010 Agreed Order and the Bankruptcy Court's current review. The 2018 Show Cause Order and Judge Ray's review of Fowler White's and Epstein's compliance with the November 2010 Agreed Order are now pending in the Bankruptcy Court, and those issues need not be heard a second time by this Court.

Edwards' Motion focuses on the 27,000+ pages contained on the disc. However, this Court recognized that not all of the documents contained on the disc were subject to Edwards' claimed privilege and that, in fact, many thousands of pages from the disc have already been produced in the case (including more than 80 documents produced by Edwards that were listed on his privilege log). Thus, the Court expressly stated that its ruling was only applicable to the 47³ exhibits that Edwards identified as privileged. (3/8/18 Aft. Tr. 76:8-21.) The Court made it clear that it was prohibiting any reference to or use of those exhibits *at the trial*. (3/18/18 Aft. Tr. 75:24-76:6.)

³Edwards claimed it is 49 exhibits, but two of the Bates numbers he referenced were pages contained within another exhibit, making the total 47 exhibits which are in dispute.

This, of course, makes sense because the Court was not making, and has not made, a ruling as to whether any of the 47 exhibits are protected by any privilege. The Court expressly ruled only that the exhibits were untimely and the Court was not going to conduct an *in camera* review three days before trial.

To date, the oral rulings made by this Court at the March 8, 2018, hearing have not been reduced to a written Order. To be clear, however, Epstein has fully complied with the Court's rulings. In fact, it was Epstein's current counsel who: (1) disclosed the chain of custody of the disc and the limited disclosure of documents to Epstein; (2) immediately cooperated and assisted Edwards in sealing docket entries 1242 and 1252; (3) filed Notices of Compliance setting forth the steps taken to comply with the Court's rulings; and (4) after the Fourth District Court of Appeal's stay was partially lifted, moved to file the disc and the 47 exhibits under seal and obtained an Agreed Order allowing the sealing. Epstein and his current counsel have completely complied with this Court's rulings regarding the disc and the 47 exhibits.

Edwards' argument that this Court prohibited general references to even assertedly privileged documents in any context other than at trial is completely nonsensical. Even a privilege log required under Florida's Rules of Civil Procedure as a condition to withhold documents on the basis of privilege must sufficiently identify the specific documents withheld with enough detail to facilitate the evaluation of and challenges to the privileges asserted therein. *TIG Ins. Corp. v. Johnson*, 799 So. 2d 339 (Fla. 4th DCA 2001); *Abbott Laboratories v. Alpha Therapeutic Corp.*, No. 97-C-1292, 2000 WL 1863543 (N.D. Ill. Dec. 14, 2000). Had the Court issued the expansive prohibition sought by Edwards, it would have effectively precluded Epstein from seeking an appellate review of the Court's rulings and defending himself in the Bankruptcy Court proceedings relating to the November 2010 Agreed Order, both of which were expressly contemplated by this

Court at the March 8th hearing. (3/8/18 Aft. Tr. 62:6-12.) It would also have interfered with appropriate efforts by Epstein's counsel to further pursue an *in camera* review of the e-mails in pre-trial proceedings, something which this Court recognized at the May 23, 2018, hearing is properly before it in light of the new trial schedule created by the Fourth District's rulings. (5/23/18 Tr. 13:9-23.)⁴ Moreover, none of the general references for which Edwards would have Epstein sanctioned violated any privileges or contain, even arguably, confidential information. *See* paragraphs 12, 14 and 17 of Edwards' Motion identifying Epstein's alleged violation. And the issue of whether any of those documents is even privileged has never once been determined by this or any other court. Accordingly, for these reasons, Edwards' sanctions Motion has absolutely no merit.

If, in fact, Edwards believes that he has "nothing to hide" in the e-mails, then Epstein urges Edwards to agree *post haste* for the Court to determine *in camera* whether any privilege or work-product protection exists as to the 47 exhibits. These 47 exhibits go to the very heart of Edwards' disingenuous allegation that there was a complete absence of probable cause for Epstein to sue Edwards, and they readily defeat Edwards' claim of purported damages! Edwards nevertheless withheld them and concealed their existence through the device of a deliberately vague and legally non-compliant privilege log. No court has ever reviewed the 47 exhibits *in camera* and determined if, in fact, any are protected or if (as Epstein is confident such a review will confirm) they should be subject to the light of the courtroom in this civil action against Epstein. Edwards seeks millions of dollars for claimed reputational damage; these e-mails demonstrate the falsity of Edwards' claim that he was hurt by Epstein's lawsuit and that Epstein had no reasonable basis to allege that Edwards was involved in Rothstein's Ponzi scheme using the tort claimants' cases.

⁴The May 23, 2018, hearing transcript is attached as **Exhibit B**.

Finally, Epstein urges this Court to recognize that Edwards' moving to prevent Epstein from discussing the exhibits generally is simply another transparent attempt by Edwards to hide the truth. Edwards asked the Fourth District Court of Appeal to strike general statements made in briefing before it on the basis that Epstein violated this Court's ruling. The Fourth District Court of Appeal, however, rejected Edwards' argument and refused to strike Epstein's general statements that the e-mails are case-ending and defeat Edwards' malicious prosecution claim against Epstein. This Court should similarly reject Edwards' arguments and deny his Motion for Sanctions.

THE COURT'S MARCH 8, 2018, HEARING

On March 8, 2018, the parties attended a special set hearing on a number of pending Motions, including Edwards' Motion to Strike Epstein's Untimely Supplemental Exhibits and to Strike all Exhibits and Any Reference to Documents Containing Privileged Materials Listed on Edwards' Privilege Log. Because the trial was only three business days away, the Court found that Epstein's then recently identified exhibits⁵ were untimely and, because of that, the Court did not have sufficient time to conduct an *in camera* inspection to evaluate Edwards' privilege assertions.

At that hearing, this Court recognized that the jurisdiction over the November 2010 Agreed Order was that of the Bankruptcy Court:

But they're not coming in here, and I would hope elsewhere, if it's going to be at the sacrifice not only as to the orderly administration of justice, but *also in derogation of a federal bankruptcy court's order or any court of recognized jurisdiction's order that would have the necessary supervisory control of a given case*, but also at the potential extermination or derogation of a privilege. And for all of those reasons is why I am extremely reluctant to start taking these things into consideration just a few days prior to trial.

⁵Epstein made a rolling production of his newly disclosed exhibits (which fell into general categories) to Edwards on February 2, 2018, February 16, 2018, and March 2, 2018. Epstein then individually identified each of those exhibits according to the Clerk's pre-marking guidelines on his March 5, 2018, Clerk's Trial Exhibit List.

(3/8/18 Aft. Tr. 54:9-20) (emphasis added).

This Court's rulings were focused on not allowing Epstein to use the late-disclosed exhibits at trial, including referencing the stricken exhibits at trial, and to sealing the disc and the alleged privileged 47 exhibits to protect Epstein's appellate record:

MR. SCAROLA: Your Honor, may we include in the order a direction that opposing counsel is required to relinquish possession of all copies of the privileged documents to the Court under seal?

THE COURT: Well, the only thing that obviously has to be taken into consideration is the appellate rights of Mr. Epstein and how they're going to preserve those rights in light of the fact that the Court has rejected the last-minute request for in-camera inspection for the reasons that I've already stated at length on the record.

(3/8/18 Aft. Tr. 62:2-12.)

The Court wanted to ensure that Epstein did not either use the alleged privileged documents at trial or refer to their contents, thereby getting information in by the "back door":

Mr. Epstein will be barred from referring to any of those records as it relates to the documents that were gathered from Fowler White or from any other source that would have included those records that were the subject of Judge Ray's order. So it's to preclude anything coming in through the back door which wouldn't be allowed through the front.

(3/8/18 Aft. Tr. 75:24-76:6.)

Both the Court and Edwards' counsel accepted Epstein's counsel's representations of who the alleged privileged documents were shared with and that the documents would not be further disseminated:

... no further dissemination is going to be made. I think that goes without saying as far as the attorneys are concerned. ... I have no doubt in my mind that they will all be respectful of the court order of non-dissemination of any of those documents hence forth.

And Mr. Link [Epstein's counsel] has already represented to the Court that other than Mr. Epstein and his co-counsel, that there have been no eyes laid upon these documents. Hence, I'm accepting that representation, as Mr. Scarola has accepted those representations during the hearing as well.

(3/8/18 Aft. Tr. 78:9-25) (emphasis added).

Paul Cassell, the Intervenors' counsel, asked that a similar representation be made by Fowler White. In response, the Court referenced a "blanket confidentiality order" to clarify that Fowler White and Epstein's other former counsel were included in the non-dissemination ruling:

As a general blanket order I would simply say that all attorneys who have or are representing Mr. Epstein shall be subject to this order of confidentiality, of sealing and of non-dissemination of *any such information that is contemplated in any of the documents* that are part of the umbrella order of Judge Ray. And that would include all of the exhibits that we spoke about today and that have been filed as a matter of record.

(3/8/18 Aft. Tr. 79:9-18) (emphasis added). But even this clarification was focused on the non-dissemination of the specific confidential information contemplated in the documents. It certainly did not preclude a general reference to their existence. Nor does a reference to their devastating impact on Edwards' cause of action reveal the specific information contemplated in the documents and violate this blanket order.

While it is understandable that Edwards does not want the truth to be known, Epstein submits that the "blanket confidentiality order" should properly be interpreted to ensure that the documents that Edwards has claimed are privileged are not used at trial or disseminated further until further order of this Court, but to permit appropriate general references to the 47 exhibits to be made in this proceeding pre-trial, in the Bankruptcy Court proceeding or in the appellate court proceedings.

ARGUMENT

General Adjective Argument is Not Disclosure

Edwards' examples of alleged violation fall far short of explicit disclosure. Edwards referenced the following alleged improper statements made by Epstein in court filings:

Second, the alleged eight-year-old "confidential" information to which Edwards refers is 47 exhibits comprised of a series of communications between Edwards and other attorneys, including Scott Rothstein, **that eviscerate Edwards' case against Epstein in its entirety . . .** Moreover, on their face, all of these eight-year-old communications clearly show that Edwards' claims of work product simply do not apply. **These inculpatory communications cannot constitute work-product.** They directly relate to issues that Edwards himself has made central to this case and their content provides independent grounds to reject work product protection, including both the **crime fraud exception and potential unprofessional conduct . . .** **the trial court refused to evaluate these issues, choosing instead to exclude the communications on the basis of what the Court believed was Epstein's untimely request to identify them on his Exhibit List.** (Motion p. 12.)

Included among those issues to be perfected at the trial court is Edwards' errant claim of "privilege" which remains a cloud below preventing the **admission of crucial evidence that Epstein maintains is dispositive of this case.** That evidence must be **reviewed in camera by the trial court while the appellate issues are under review.** Consistent with this Court's interest in "fairness" and "efficient use of the **trial court's time and resources,**" Epstein will be narrowing his request for *in camera* review down from 27,000 pages to a readily manageable fraction, 47 exhibits numbering approximately 100 pages. (Motion p. 14.)

Recent events (appeal and stay) and the discovery of e-mails that total [sic] eviscerate Counter-Plaintiff Bradley J. Edwards' ("Edwards") claims and shines a light on his true motivation have prompted unprofessional behavior from Edwards and his counsel evidenced by the unilateral setting of hearings, certificates of conferring that never happened and intentional ex parte attendance at a hearing despite knowing of Epstein's counsel's unavailability. (Motion p. 17.)

None of these statements evidence disclosure of the contents of any documents Edwards deems are privileged but, rather, they are made in connection with requests for judicial relief. If merely referencing the documents' existence is a violation of the Court's ruling, then Edwards, himself, violated it with the filing of his Motion for Sanctions citing the alleged statements and by filing his Motion for Order to Show Cause in the Bankruptcy Court.

In fact, the challenged statements are appropriate general statements about the *nature* of the documents and their impact on Edwards' case – consistent with this Court's own recognition in open Court that the documents are "detrimental" to Edwards' case:

And I understand what you're going to tell me because I've gotten a flavor for some of these documents that have been provided. ... And that is that they are detrimental to the position taken by Mr. Edwards and that they are helpful to the position taken by Mr. Epstein.

(3/8/18 Aft. Tr. 51:23-52:5)(emphasis added). If the Court's ruling prohibits general statements about the e-mails, including that they are "detrimental" or "case-ending" to Edwards' malicious prosecution action, even in court filings, then Epstein's counsel would be prevented from advancing any argument for an *in camera* review or other relief with respect to the e-mails in this Court or the appellate court or from defending himself in the Bankruptcy Court. Edwards' ludicrous interpretation of this Court's ruling as a blanket gag order would effectively impede discharge by Epstein's counsel of their ethical duties to zealously advocate for Epstein. The Court's ruling contains no express statement to justify an interpretation that would substantially interfere with counsel's ethical duties in their representation of a client.

Epstein Has Fully Complied with this Court's Ruling

At most, this Court prohibited Epstein and his counsel from disseminating the specific information contemplated in the 47 exhibits Edwards improperly claims are privileged. However, Epstein has not disseminated, quoted or specifically referenced the contents of any of the 47

exhibits. Epstein's general references to the e-mails disclose nothing confidential contained therein and, therefore, fully comply with the Court's oral rulings.

Edwards bases his claims of sanctionable violations on general references to materials which, although he seeks to protect them as privileged, he never properly supported with a legally sufficient and *TIG*-compliant privilege log, and therefore should not be presumed to be protected. Ironically, had Edwards provided a legally sufficient privilege log, based on Edwards' nonsensical interpretation of this Court's rulings, even the limited descriptions legally required to withhold the 47 exhibits contained therein would be a violation of this Court's rulings. The general references to the 47 exhibits for which Edwards seeks sanctions are far less specific than the descriptions which Edwards was required, but failed, to provide in a legally sufficient privilege log.

Despite Edwards' protestations to the contrary, in fact, Epstein has fully complied with the Court's rulings. It was Epstein who – without hesitation – agreed to the sealing; worked with Edwards' counsel to obtain an Agreed Order sealing the docket entries, disc and exhibits; and then filed Notices of Compliance. Epstein has not once disclosed the case-ending e-mails in the press, or to others, or, after the March 8, 2018, hearing, expressly stated their content in any pleadings before this or any other court! Ignoring all of this, Edwards simply seeks a gag order on the truth.

Fourth District Court of Appeal Denied a Similar Request from Edwards

In his Motion to this Court, Edwards argues that no less than four times Epstein referenced the alleged privilege exhibits in filings with both this Court *and* the appellate court. Conveniently for Edwards, he neglects to disclose to this Court that he also sought to strike references to the 47 exhibits from Epstein's appellate filings on these same grounds, and the Fourth District Court of Appeal denied Edwards' requested relief in both cases without even requiring Epstein to respond.

See April 5, 2018, Order, *Epstein v. Rothstein and Edwards*, 4th DCA Case No. 4D18-0762; April

6, 2018, Order, *Epstein v. Rothstein and Edwards*, 4th DCA Case No. 4D18-0787. (**Composite Exhibit C.**)

CONCLUSION

Epstein's general references in pre-trial filings with this Court and in the Fourth District Court of Appeal to the 47 exhibits in question are fully compliant with the Court's rulings at the March 8, 2018 hearing. Epstein has not disseminated the 47 exhibits that were the subject of those rulings or any of the specific information contained in those documents, and, in fact, has taken numerous affirmative steps to ensure compliance with the Court's directives. The issue of Fowler White's and Epstein's compliance with Judge Ray's Bankruptcy Court November 2010 Order is squarely before Judge Ray as a result of Edwards' separate motion before that court. The Fourth District Court of Appeal has already denied Edwards' separate motions to strike Epstein's references to the 47 exhibits based on asserted violations of this Court's rulings, which should dictate a similar response by this Court to the instant motion. Furthermore, any consideration of sanctions against Epstein arising from Epstein's disclosure of any allegedly attorney-client privileged and/or work-product protected information contained in any of the 47 exhibits necessarily requires an evaluation of whether any such privilege or work-product protection actually exists, and, if so, to what extent it was invaded by such disclosure. Epstein vehemently denies that any attorney-client privilege or work product protection applies with respect to the 47 exhibits, and neither this Court nor any other has ever affirmatively determined that any such privilege or protection exists. For all of these reasons, Edwards' Motion for Sanctions and the Intervenors' Joinder are improper and must be denied.

CERTIFICATE OF SERVICE

I certify that the foregoing document has been furnished to the attorneys listed on the Service List below on June 7, 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: Thursday, March 8th, 2018
TIME: 1:30 p.m. - 4:50 p.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:

Elaine V. Williams
Palm Beach Reporting Service, Inc.
1665 Palm Beach Lakes Boulevard, Suite 1001
West Palm Beach, FL 33401
(561) 471-2995

1 that was not in the hands of Mr. Epstein's lawyers
2 since 2009, whenever this all came to fruition,
3 then I would say we'd have to take a different
4 approach. But the very nature of the documents
5 that we're talking about -- again, rightly or
6 wrongly held -- were in fact held by Fowler White,
7 Epstein's counsel, at an incredible crucial time in
8 this process; and that being in and around 2010,
9 when the Rothstein firm imploded, when these
10 e-mails were apparently confiscated, when somebody
11 made the decision that instead of Farmer paying for
12 the copy costs, they be handed over to Fowler
13 White. And if I have a bit of an incredulous tone
14 to that statement, it's probably purposeful.

15 But the fact remains, Mr. Link, that these
16 materials were in the hands of Epstein's attorneys
17 from the inception of the issue itself. And to now
18 come to the Court with not five pages of documents
19 to look at, but 27,000, or whatever that number
20 is -- it escapes me because of its shear mass -- is
21 impossible and is not going to be countenanced
22 here.

23 And I understand what you're going to tell me
24 because I've gotten a flavor for some of these
25 documents that have been provided.

1 and what I think is more important than any of
2 this, which is getting to the truth. And I believe
3 in my heart, your Honor, the reason I'm so
4 passionate about this and the reason I apologize
5 for interrupting you is if this courtroom is
6 looking for the truth, then those 49 documents have
7 got to come into court. They have got to go in
8 front of the jury.

9 THE COURT: But they're not coming in here,
10 and I would hope elsewhere, if it's going to be at
11 the sacrifice not only as to the orderly
12 administration of justice, but also in derogation
13 of a federal bankruptcy court's order or any court
14 of recognized jurisdiction's order that would have
15 the necessary supervisory control of a given
16 case, but also at the potential extermination or
17 derogation of a privilege. And for all of those
18 reasons is why I am extremely reluctant to start
19 taking these things into consideration just a few
20 days prior to trial.

21 Again, if this was something that came into
22 play that was being hidden by the other side, and
23 I'm talking now generically, and your side
24 discovered that information at the 11th hour, this
25 would be an entirely different discussion. And

1 reasons for the Court's ruling.

2 MR. SCAROLA: Your Honor, may we include in
3 the order a direction that opposing counsel is
4 required to relinquish possession of all copies of
5 the privileged documents to the Court under seal?

6 THE COURT: Well, the only thing that
7 obviously has to be taken into consideration is the
8 appellate rights of Mr. Epstein and how they're
9 going to preserve those rights in light of the fact
10 that the Court has rejected the last minute request
11 for in-camera inspection for the reasons that I've
12 already stated at length on the record.

13 MR. SCAROLA: Which is why I've suggested that
14 they be relinquished to the Court under seal, your
15 Honor. They can be given an exhibit number. To
16 the extent that the appellate court finds it
17 reasonable and necessary to examine those
18 documents, the appellate court will have the
19 opportunity to do that.

20 THE COURT: So you're suggesting to file with
21 the Clerk of Court under seal the documents at
22 issue?

23 MR. SCAROLA: Yes, sir, that's correct.

24 THE COURT: That's better stated.

25 Do you have any objection?

1 THE COURT: Not as far as the court file is
2 concerned.

3 MR. LINK: The court file only contains the
4 redacted version. We have double checked that. I
5 asked Mr. Cassell to tell me if I missed a
6 redaction. Could it happen? Yes, it could happen.
7 We haven't found one. If there was one that wasn't
8 redacted, we'd be glad to redact it. But the only
9 thing that was filed in the clerk file was the
10 redacted version.

11 Thank you, Judge.

12 THE COURT: All right. Thank you.

13 Much of which -- or much of the relief that
14 has been requested has essentially been taken care
15 of I believe through the Court's prior order; that
16 is, that the one disk containing the documents that
17 are being sought to be introduced at trial to take
18 to record will be permitted to be filed under seal.
19 The sanitized redacted versions of those records
20 I'm also ordering to be sealed in an abundance of
21 caution just in case there may be some error, not
22 intentional, on the part of counsel who filed those
23 records.

24 Mr. Epstein will be barred from referring to
25 any of those records as it relates to the documents

1 that were gathered from Fowler White or from any
2 other source that would have included those records
3 that were the subject of Judge Ray's order. So
4 it's to preclude anything coming in through the
5 back door which wouldn't be allowed through the
6 front.

7 Mr. Link, did you want to comment on this?

8 MR. LINK: Yes. I wanted to remind the Court
9 we have over a hundred exhibits that were listed on
10 that disk that are already in the court file.
11 We've used them in depositions. So I'm
12 wondering -- those aren't excluded.

13 THE COURT: Right. I'm not talking about
14 those. I'm talking about the ones that have been
15 derived from Fowler White and that have been sought
16 to be introduced as part of the 748 or 724, or
17 whatever this number is, or the 45 that have been
18 claimed as privileged and have not been ruled upon
19 and will not be ruled upon prior to trial because
20 of the reasons that I have explained in detail
21 earlier.

22 MR. LINK: Thank you, Judge.

23 THE COURT: Mr. Cassell, did I leave out
24 anything else?

25 MR. CASSELL: Yes. We want to know how the

1 reserving on that as well.

2 MR. CASSELL: But related to that is the
3 distribution. The cat is now wandering out of the
4 bag, so time is of the essence.

5 THE COURT: Right. And again, I think that in
6 an abundance of caution, and I understand your
7 concerns, but what the attorneys here recognize --
8 and Mr. Epstein is also under this order -- is that
9 no further dissemination is going to be made. I
10 think that goes without saying as far as the
11 attorneys are concerned. I've known each of them
12 seated at counsel table for many years, as I have
13 known Mr. Scarola and Miss Terry, Mr. Burlington,
14 and I think they recognize that when this Court
15 makes a statement, that it is abundantly clear that
16 it will be enforced to the letter. I have no doubt
17 in my mind that they will all be respectful of the
18 court order of non-dissemination of any of those
19 documents hence forth.

20 And Mr. Link has already represented to the
21 Court that other than Mr. Epstein and his
22 co-counsel, that there have been no eyes laid upon
23 these documents. Hence, I'm accepting that
24 representation, as Mr. Scarola has accepted those
25 representations during the hearing as well.

1 MR. CASSELL: We haven't heard, of course,
2 from Fowler White. Will the Court direct them to
3 make similar representations?

4 THE COURT: I believe that I have sufficient
5 authority to do that under these relatively
6 peculiar circumstances. My jurisdiction, though,
7 is somewhat limited because they have withdrawn
8 from the case.

9 As a general blanket order I would simply say
10 that all attorneys who have or are representing Mr.
11 Epstein shall be subject to this order of
12 confidentiality, of sealing and of non-
13 dissemination of any such information that is
14 contemplated in any of the documents that are part
15 of the umbrella order of Judge Ray. And that would
16 include all of the exhibits that we spoke about
17 today and that have been filed as a matter of
18 record.

19 MR. CASSELL: Could they also be directed to
20 make a representation as to who they have
21 distributed the documents to?

22 THE COURT: Mr. Link has already -- are you
23 talking about Fowler White?

24 MR. CASSELL: Fowler White.

25 THE COURT: I don't think that I have that

EXHIBIT B

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
(561) 471-2995

1

2 APPEARANCES:

3

For Plaintiff/Counter-Defendant:

4

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

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For Defendant/Counter-Plaintiff:

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SEARCY, DENNEY, SCAROLA, BARNHART &
SHIPLEY, P.A.
2139 Palm Beach Lakes Boulevard
West Palm Beach, FL 33409
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 --

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.

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 depos 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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COURT CERTIFICATE

4 STATE OF FLORIDA)
5 COUNTY OF PALM BEACH) : SS

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.

13 Dated this 31st day of May 2018.

SONJA D. HALL

EXHIBIT C

NOT A CERTIFIED COPY

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT, 110 SOUTH TAMARIND AVENUE, WEST PALM BEACH, FL 33401

April 05, 2018

CASE NO.: 4D18-0762

L.T. No.: 5802009CA040800XXXMB
AG

JEFFREY EPSTEIN

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

Appellant / Petitioner(s)

Appellee / Respondent(s)

BY ORDER OF THE COURT:

ORDERED that the respondent's April 3, 2018 motion to strike is denied.

Served:

cc: Kara Berard Rockenbach
Jack Alan Goldberger
Bradley J. Edwards

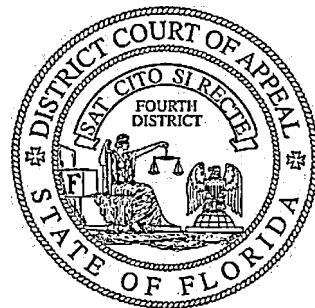
John Scarola
Nichole J. Segal

Philip M. Burlington
Rachel Jenny Glasser

dl



LONN WEISSBLUM, Clerk
Fourth District Court of Appeal



IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT, 110 SOUTH TAMARIND AVENUE, WEST PALM BEACH, FL 33401

April 06, 2018

CASE NO.: 4D18-0787

L.T. No.: 502009CA040800XXXMB

JEFFREY EPSTEIN

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

Appellant / Petitioner(s)

Appellee / Respondent(s)

BY ORDER OF THE COURT:

ORDERED that the respondent, Bradley Edwards' April 3, 2018 "motion to strike all references to the alleged contents of material which Epstein and his counsel unlawfully possessed" is denied.

Served:

cc: Kara Berard Rockenbach
Scott J. Link
Nichole J. Segal

John Scarola
Karen Elizabeth Terry
Rachel Jenny Glasser

Marc S. Nurik
Jack Alan Goldberger
Bradley J. Edwards

ct

Lonn Weissblum

LONN WEISSBLUM, Clerk
Fourth District Court of Appeal

