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IN THE CIRCUIT COURT OF THE 15TH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

CASE No. 502014CP003698XXXXSB

TED BERNSTEIN, as Trustee of the Shirley Bernstein Trust
Agreement Dated May 20, 2008, As Amended,

Plaintiff,

-vs-

ALEXANDRA BERNSTEIN; ERIC BERNSTEIN; MICHAEL BERNSTEIN;
MOLLY SIMON; PAMELA B. SIMON, Individually and as
Trustee f/b/o Molly Simon under the Simon L. Bernstein
Trust Dtd 9/13/12; ELIOT BERNSTEIN, Individually, as
Trustee f/b/o D.B., Ja. B. and Jo. B. under the Simon L.
Bernstein Trust Dtd 9/13/12, and on behalf of his minor
children D.B., Ja. B. and Jo. B.; JILL IANTONI,
Individually, as Trustee f/b/o J. I. under the Simon L.
Bernstein Trust Dtd 9/13/12, and on behalf of her minor
child J.I.; MAX FRIEDSTEIN; LISA FRIEDSTEIN,
Individually, as Trustee f/b/o Max Friedstein and C.F.,
under the Simon L. Bernstein Trust Dtd 9/13/12, and on
behalf of her minor child, C.F.,
Defendants.

HEARING BEFORE THE HONORABLE
MARTIN H. COLIN

Monday, September 15, 2014
Palm Beach County Courthouse
Delray Beach, Florida 33444
9:57 a.m. - 11:14 a.m.

Stenographically Reported By:

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1 Jeana Kim, CRR, RMR, FPR, CLR
2 Certified Realtime Reporter
3 U.S. Legal Support, Inc.
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1 **APPEARANCES:**
2 On behalf of the Plaintiff:
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10 On behalf of the Defendant:

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13 2753 Northwest 34th Street
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15 Phone: 561.245.8588

16 On behalf of the personal representative:

17 JOIELLE "JOY" FOGLIETTA, ESQUIRE
18 CIKLIN, LUBITZ, MARTENS & O'CONNELL
19 515 North Flagler Drive
20 20th Floor
21 West Palm Beach, Florida 33401
22 Phone: 561.832.5900

23 **ALSO PRESENT:**
24 Ted Bernstein
25 Donna Bernstein

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1 P R O C E E D I N G S
2 - - -
3 THE COURT: All right. So, good morning.
4 We're here on Case No. 2012CP004391.
5 Counsel and pro ses, make your appearances.
6 MR. ROSE: Good morning, Your Honor. Alan
7 Rose on behalf of Ted S. Bernstein, successor
8 trustee.
9 MR. BERNSTEIN: Good morning, Your Honor.
10 Eliot Bernstein, pro se.
11 THE COURT: All right. So we're here on --
12 MR. ROSE: Your Honor, one minute --
13 THE COURT: -- a for motion for contempt; is
14 that correct?
15 MS. FOGLIETTA: Judge, Joy Foglietta on behalf
16 of Brian O'Connell, personal representative.
17 THE COURT: Okay.
18 MR. ROSE: Yes, sir.
19 THE COURT: But I see that Eliot filed an
20 urgent motion to schedule for medical reasons, et
21 cetera.
22 What's going on with that, Eliot?
23 MR. BERNSTEIN: (Indicating).
24 THE COURT: Okay.
25 MR. BERNSTEIN: So I'm going to be speaking

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1 with nine spikes of titanium nails cutting me out.
2 But he wouldn't -- this is the most important
3 hearing in the world, so I'm here. Let's go.
4 THE COURT: All right. Okay. I have -- let
5 me address one thing. I appreciate that you did
6 something different this time, and I'm not sure it
7 was intentional, but if it was, good for you. You
8 changed the style of your pleading from "emergency"
9 to "urgent." Was that intentional?
10 MR. BERNSTEIN: I don't like to call an
11 emergency unless there is an emergency.
12 THE COURT: So that was good, meaning -- but
13 here's the problem. I'm going to ask you to just
14 be aware of this. It doesn't take a whole lot to
15 let me know if someone needs something rescheduled,
16 okay? The filing in this case was 331 pages.
17 MR. BERNSTEIN: That was the evidence added to
18 it.
19 MR. ROSE: But see, that's what you're not
20 supposed to do.
21 MR. BERNSTEIN: Oh, okay.
22 THE COURT: So the clerk's file, they have to
23 take time to scan everything in. They have no
24 discretion if you give them something.
25 And so, for example, when I went to print out

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1 your pleading, I didn't pay attention to how long
2 it was at first, and then I saw it was 331 pages.
3 I had to --
4 MR. BERNSTEIN: Can I not put exhibits in?
5 THE COURT: What?
6 MR. BERNSTEIN: Can I not put exhibits in?
7 THE COURT: Yeah, you don't put -- in a
8 motion, you don't put your evidence in.
9 MR. BERNSTEIN: For exhibits?
10 THE COURT: Yeah, you don't have to if it's an
11 exhibit. But a motion to continue, it doesn't --
12 it's almost beyond the realm of possibilities that
13 you'll have, for a motion to continue, based
14 upon -- if you have a medical reason, you say,
15 Judge, I have a medical reason; what exhibits do I
16 need other than maybe if you thought I needed a
17 verification that you had a medical procedure.
18 MR. BERNSTEIN: It was just that I had told
19 him a lot of times, so I put in all of the
20 correspondences.
21 THE COURT: That's unnecessary, okay?
22 MR. BERNSTEIN: Okay. I apologize.
23 THE COURT: I get it right away like that.
24 MR. BERNSTEIN: I apologize.
25 THE COURT: While we're here on the topic --

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1 so let's go over because I think I want to -- we
2 need to be able to do this for everyone's sake --
3 what it means to have to an emergency hearing in
4 probate, okay?
5 So we really don't have -- it's being drafted
6 now -- a specific administrative order that deals
7 exactly with that topic in probate itself. We have
8 it in civil and we have one in family. But now
9 we're drafting one.
10 But the general one is that it's a matter of
11 life and death, meaning that the clerk has to stop
12 what they're doing. If I'm in the middle of
13 someone else's hearing, I can't hear their matter.
14 I have to rule on the emergency right away because
15 if I don't rule in the next five minutes, someone
16 may die.
17 In a probate case, that's really unusual. I
18 checked around. No one said it's ever happened in
19 the history of probate cases. So we don't really
20 get that.
21 In family, by example, when someone files a
22 motion for not necessarily an emergency hearing but
23 for relief and they say, the child is at the
24 airport boarding the plane to a country that
25 doesn't accept the Hate Convention, Homeland

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1 Security says you've got 15 minutes to stop,
2 otherwise, you'll never see the child again, that's
3 what that means.
4 So because -- and that's the reason why those
5 motions are getting denied, because they're not
6 emergencies.
7 However, we do allow you, if you want to --
8 this is for everybody -- to have a hearing, because
9 I rarely grant emergency relief without a hearing.
10 I mean, that has to be -- that means I'm doing an
11 ex-parte without the other side being heard. But
12 if you want a hearing and you want it to be done
13 sooner than later, whether it's because it's
14 important or because you're having trouble
15 scheduling, put the word "urgent," and then that
16 comes to me. And then I'll look at it and then
17 I'll be involved, which I'm now even more
18 accessible to scheduling because I now have the
19 computer on my desk. They actually gave me a new
20 one here, it's bigger, for scheduling purposes.
21 And the other -- because some of the filings
22 of emergency motions were 90 pages and 100 pages,
23 and the clerk just has to -- I mean, the system
24 just shuts down for everybody else. So it is what
25 it is.

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1 But now I think you've got the right button to
2 push. It will be the urgent button if you think
3 it's something that is more important than not.
4 And then I'll consider it and give you a hearing
5 sooner than later.
6 Now, in my division, I set things sooner
7 anyway. So you almost don't even need to go there.
8 If you think so, fine.
9 MR. BERNSTEIN: Can I say something?
10 THE COURT: Sure, if you want.
11 MR. BERNSTEIN: The emergency that I did file,
12 which I apologize to you in the pleading, was to
13 keep my kids in school and complete my parents'
14 wishes. Mr. Rose said he was going to schedule
15 something and bring it to you and, blah, and they
16 were turned away from school. And I was trying to
17 get in here as fast as I could --
18 THE COURT: I thought I entered the order on
19 that. And my comment, when I denied the emergency
20 hearing, was that I had already entered an order
21 directing payment and so --
22 MR. BERNSTEIN: He didn't pay it.
23 THE COURT: Well, but the order was entered.
24 I don't enter an order twice. Once I order it, it
25 means do it. So it meant pay the money for the

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1 schooling. I'm pretty sure that's what the order
2 was.
3 But that's got resolved?
4 MR. BERNSTEIN: No. My kids got thrown out of
5 school on the day of school.
6 THE COURT: Are they back in school?
7 MR. BERNSTEIN: No. They had to go to new
8 schools. And we've been trying to get them in.
9 This is more of Mr. Rose's strategy of force and
10 aggression.
11 THE COURT: I'm not happy to hear that it
12 didn't work out well, but I'm not going to hear
13 that now. I will hear it --
14 MR. BERNSTEIN: Okay. Well, that was the
15 emergency. I'm sorry. We'll get to that later,
16 you're right. I agree with you, let's --
17 THE COURT: In the order, that the money get
18 paid because you folks agreed to that, so that
19 wasn't too hard for me.
20 MR. ROSE: For the record, Your Honor,
21 Mr. Bernstein refused to comply with the order. He
22 refused to sign the agreement that you read in open
23 court and, therefore, they did make the payment,
24 made only two days later; it was too late. But
25 that's not why we're here today.

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1 Can I approach with what we're here for today?
2 THE COURT: Is this the motion --
3 MR. ROSE: There are four issues. I have a
4 short, just sort of a summary outline, if it
5 would -- I think it would just focus the Court on
6 where we're going today. It's very short issues.
7 These are four very short, narrow issues that are
8 essentially a motion to hold Eliot Bernstein in
9 contempt of court for violating your prior orders
10 and to compel him to comply with your prior orders
11 and with the rulings of civil procedure. They are
12 four very narrow issues.
13 The first one deals with the privileged
14 e-mail, which Your Honor had entered an order,
15 which is tab -- on my set up, it's Tab A. You
16 entered an order back on July 18th directing
17 certain things to be done because there was a
18 privileged e-mail that Mr. Bernstein received
19 inadvertently. We had a whole evidentiary hearing.
20 He has not appealed the order, so it's a final --
21 it's an order that's not appealable at this time.
22 He's continuing to use the materials that were in
23 the privileged e-mail, which you determined to be
24 privileged, which he hasn't appealed.
25 And I've given Your Honor and Mr. Bernstein

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1 this morning three examples of the many examples.
2 That would be -- I gave a package to you earlier.
3 If you flip through, one of these is a complaint.
4 The second of the examples --
5 THE COURT: That's in this packet?
6 MR. ROSE: Yes, sir, the second example. It's
7 a complaint. Actually, it's the last one,
8 probably, if they're in the same order as mine.
9 THE COURT: Well, this is opening. So that's
10 one, a purported violation of the July 18th order.
11 MR. ROSE: Correct. He's basically
12 republished your order in a complaint that he filed
13 against me and 92 other people and 5,000 John Does
14 in unrelated cases of Oppenheimer. But he's
15 republished your e-mail verbatim, incorporated it
16 by reference. And there are numerous other --
17 THE COURT: My e-mail?
18 MR. ROSE: No, I'm sorry.
19 THE COURT: You said my e-mail.
20 MR. ROSE: My e-mail. He's republished the
21 e-mail from Ted Bernstein to me in violation of
22 your order. There are three or four other examples
23 among other examples.
24 The three issues are very narrow. You've
25 ordered him to appear for deposition, and he

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1 refuses to give me a date, not because of medical
 2 reasons but because of his view that I should be
 3 disqualified or removed or Ted should be removed or
 4 other things. He's already lost a motion to
 5 disqualify me, but he refuses to appear for
 6 deposition or --
 7 THE COURT: That's the 19th order?
 8 MR. ROSE: Correct.
 9 THE COURT: What's next?
 10 MR. ROSE: Production. The same thing, he
 11 won't produce any documents to me because he
 12 doesn't recognize the validity of my existence in
 13 this case.
 14 THE COURT: Where is that?
 15 MR. ROSE: That's the production request and
 16 his objections to our discovery. He objected to
 17 every discovery on the grounds that --
 18 THE COURT: Can I see the production request
 19 and his objections?
 20 And are you saying that I already ruled on
 21 that?
 22 MR. ROSE: No.
 23 THE COURT: So that can't be contempt,
 24 correct?
 25 MR. ROSE: Right, that's just to -- for the

14

1 purposes of today, I can withdraw that and come
 2 back on the production on a different day, Your
 3 Honor. That's easy.
 4 The fourth thing is very important, though,
 5 which is e-mail and e-service rules. There are
 6 rules. Rule 2.516 of the Rules of Judicial
 7 Administration and Rule 1.080 of the Rules of Civil
 8 Procedure, you're only allowed, when you have the
 9 privilege of using e-mail service, to serve the
 10 people who the lawyers designate to be served. I
 11 could designate him to serve anybody I want in the
 12 world along with one or two secondary e-mail
 13 addresses. But that's the only e-mail he can
 14 serve.
 15 If you look at this table, he has served every
 16 single one of these papers on every single person
 17 in my law firm. Every legal assistant, every
 18 secretary, every lawyer, the bookkeeper, the people
 19 that are in my second office. If you can imagine
 20 getting hundreds of e-mails from Eliot Bernstein
 21 with stacks and stacks of paper, how disruptive
 22 that is, and it violates the rules.
 23 This is what he served on Friday. And on
 24 Saturday and on Sunday -- or on Sunday and Monday,
 25 I got 538 more pages twice. And he's sending it to

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1 every single person in my law firm. That violates
 2 the rules.
 3 So those are the three issues we're here for
 4 today. I think they're simple and straightforward.
 5 THE COURT: Stop. So under the contempt
 6 rules, Eliot, the way we do this is -- I'll take
 7 this one at a time. Do you have in front of you
 8 the order of July 18, 2014?
 9 MR. BERNSTEIN: Yes, sir.
 10 THE COURT: It's called -- so that one deals
 11 with the prohibition against republishing the
 12 e-mail that you received that Mr. Rose intended to
 13 send to his client. And so this is civil contempt.
 14 So paragraph 9 says what it says about that
 15 order. They contend you violated the order by
 16 continuing to publish that document.
 17 So I need to ask you one of two things:
 18 Either you agree that you did the act, and then
 19 you're allowed to be heard on why or why not you
 20 should be held in contempt, or you can challenge
 21 whether you did it and make them prove it.
 22 MR. BERNSTEIN: Okay.
 23 THE COURT: Which one do you want to do?
 24 MR. BERNSTEIN: I'll challenge it.
 25 THE COURT: Okay. The next thing they want to

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1 say is that you're not agreeing to sit for
 2 deposition, notwithstanding the order of June 19th.
 3 Is that an issue or not?
 4 And he says it's because you don't recognize
 5 him as a person who can take it, but I ordered it.
 6 MR. BERNSTEIN: I challenge that.
 7 THE COURT: You challenge that? Have you sat
 8 for a deposition already?
 9 MR. BERNSTEIN: No.
 10 THE COURT: And then the last one is the
 11 nature by which you're serving papers pursuant
 12 to --
 13 MR. BERNSTEIN: Challenge.
 14 THE COURT: You saying you're serving in
 15 compliance with the rules?
 16 MR. BERNSTEIN: Correct.
 17 THE COURT: Your first witness?
 18 MR. ROSE: Mr. Eliot Bernstein.
 19 THE COURT: Come on up.
 20 Proceed.
 21 - - -
 22 Thereupon,
 23 (ELIOT BERNSTEIN)
 24 having been first duly sworn or affirmed, was examined
 25 and testified as follows:

17

1 THE WITNESS: Absolutely.
2 THE COURT: Go ahead.
3 DIRECT EXAMINATION
4 BY MR. ROSE:
5 **Q. Did I hand you these three documents outside**
6 **of court today?**
7 A. I believe so.
8 **Q. I'd like you to take a look at the three**
9 **exhibits. The first one that we're going to look at --**
10 **I'll make it easy.**
11 MR. ROSE: Do you want me to mark this as
12 Exhibit 1?
13 THE COURT: Whatever you want.
14 (Petitioner's Exhibit No. 1 was marked for
15 identification.)
16 BY MR. ROSE:
17 **Q. I'm handing you what I've marked as**
18 **Petitioner's Exhibit 1, which is a countercomplaint that**
19 **you filed in the case called Eliot Bernstein versus**
20 **Oppenheimer & Company. Do you see that?**
21 A. Correct.
22 **Q. Did you file that paper?**
23 A. I believe so.
24 **Q. If you turn to the first green tab on the**
25 **side, paragraph 235 --**

18

1 A. Yes, sir.
2 **Q. Did you write that paragraph?**
3 A. I did.
4 **Q. And in that paragraph, you advised that**
5 **"Claims of privilege were levied in attempts to cover up**
6 **the documents that both threatens Eliot with**
7 **forcefulness and aggressiveness and displays a wide**
8 **variety of breaches of fiduciary duty in the estate."**
9 **Did you write that?**
10 A. I did.
11 **Q. And you don't believe that discloses the**
12 **substance of the e-mail that Ted sent to me?**
13 A. I don't believe that violates the Court's
14 order.
15 **Q. That wasn't my question.**
16 **Does that contain the substance of what was in**
17 **the e-mail that there was threaten to forcefulness and**
18 **aggressiveness?**
19 A. No. That is a link to a website that somebody
20 else published.
21 **Q. And in the website, someone could find the**
22 **privileged e-mail?**
23 A. Possibly. I didn't publish it.
24 **Q. Do you believe --**
25 A. I believe parts are up there, but somebody has

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1 already told you they did, correct?
2 **Q. Do you believe that somebody could find the**
3 **privileged e-mail by going to that e-mail --**
4 A. I believe the court order addresses that.
5 **Q. And if you go to --**
6 A. It said I shouldn't forward by e-mail the
7 letter. I haven't done that.
8 **Q. And then if you look at paragraph 236, "That**
9 **in keeping with the court order, you will not republish**
10 **the e-mail, but you will direct the Court to available**
11 **sites where it exists publicly and eternally in the**
12 **worldwide web."**
13 **Do you see that?**
14 A. Correct.
15 **Q. And then the last sentence of paragraph 236,**
16 **you incorporate by reference the privileged e-mail in**
17 **its entirety in this lawsuit that you filed?**
18 A. No. I put in a link to a website.
19 **Q. And then it says, "Incorporate by referencing**
20 **in entirety herein."**
21 A. Okay, yeah.
22 **Q. Correct?**
23 A. Yeah.
24 **Q. That would include what's in that website?**
25 A. Correct.

20

1 **Q. And you would agree the privileged e-mail is**
2 **at that website?**
3 A. I don't know, I said.
4 Have you checked it?
5 **Q. It's your testimony, sir. Are you telling the**
6 **Court you don't believe --**
7 A. I don't know if the whole e-mail is there or
8 what they published. I know those are links I was given
9 to that document.
10 **Q. And it's your testimony --**
11 A. And it's a whole blog on it, actually, on the
12 Ted Bernstein report.
13 (Petitioner's Exhibit No. 2 was marked for
14 identification.)
15 BY MR. ROSE:
16 **Q. If you look at what we'll mark as Exhibit 2 --**
17 A. The order was that I not e-mail the document
18 to anybody or forward it. I didn't do any of that.
19 **Q. Exhibit No. 2 is an --**
20 A. Or republish the link of somebody else's.
21 **Q. Exhibit No. 2 is an e-mail dated**
22 **September 4th. Did you send this e-mail to me and**
23 **numerous other people?**
24 A. I did.
25 **Q. If you turn to the second page with a green**

1 **tab, did you write, "As the privileged letter revealed**
2 **and Ted's admissions" --**

3 THE COURT: Wait, wait. Where are you now?

4 THE WITNESS: The second page of the e-mail.

5 MR. ROSE: I'm on the e-mail from
6 September 4th. It should be the three things in
7 the package with the green tabs. I'm sorry, Your
8 Honor, we switched to a different document.

9 THE COURT: All right. I see September 4th
10 e-mail from Eliot to Alan. Okay, got it.

11 MR. ROSE: And numerous other people.

12 BY MR. ROSE:

13 **Q. So page 2, did you write, "As the privileged**
14 **letter revealed and Ted's admissions on the stand**
15 **reflect, you and Ted have engaged in legal strategy**
16 **against of 'force and aggression.'"**

17 **Do you see that?**

18 A. Yes, I do.

19 (Petitioner's Exhibit No. 3 was marked for
20 identification.)

21 BY MR. ROSE:

22 **Q. And the third document, which is marked as**
23 **Exhibit 3, is a motion in opposition, which you filed in**
24 **the Shirley Bernstein estate. Can you identify that --**

25 A. The one where is John Pankowski (phonetic)

1 fired?

2 THE COURT: I missed the question.

3 THE WITNESS: So did I.

4 THE COURT: Slow down.

5 MR. ROSE: I'm onto the next exhibit.

6 THE COURT: Okay. Go ahead.

7 BY MR. ROSE:

8 **Q. Exhibit No. 3 is the motion in opposition.**
9 **Did you file that document in the courthouse on**
10 **August 28th of this year?**

11 THE COURT: Do I have that?

12 MR. ROSE: It's the third -- the three things
13 that I --

14 THE WITNESS: Yes.

15 THE COURT: One, two.

16 THE WITNESS: Yes.

17 MR. ROSE: I have an extra copy, Your Honor.

18 THE WITNESS: You probably have it in your
19 computer.

20 MR. ROSE: This would be Exhibit 3, Your
21 Honor. I apologize.

22 THE COURT: Okay. So this is called, in the
23 Shirley Bernstein Estate, a motion in opposition,
24 et cetera.

25 Go ahead.

1 BY MR. ROSE:

2 **Q. If you go to page 4, there is a tab, another**
3 **green tab, that should be on the side. If it's not --**

4 A. No.

5 **Q. Paragraph 5, "That Alan attempted to smear,**
6 **harass, defame and -- Eliot, et cetera, according to the**
7 **alleged trustee, Theodore, under oath in these" --**

8 THE COURT: Slow down.

9 MR. ROSE: I'm sorry.

10 BY MR. ROSE:

11 **Q. -- "of forcefulness and aggression in dealing**
12 **with Eliot. This strategy was also stated and detailed**
13 **in an e-mail sent to Eliot by Theodore that contained a**
14 **letter Theodore wrote to Alan, a claim they intended on**
15 **using this strategy of force and aggression on Eliot and**
16 **all those who are helping him, too."**

17 **Did you write that?**

18 A. Yeah.

19 **Q. Are there numerous other places in which you**
20 **have referenced the forcefulness and aggression and the**
21 **facts that came out --**

22 A. Yep.

23 **Q. -- the e-mail?**

24 A. Yeah. I think all over the place.

25 **Q. Next, do you serve every single piece of paper**

1 **in this case on every single person in my law firm that**
2 **you know their e-mail address?**

3 A. I've been serving --

4 THE COURT: Listen to his question.

5 THE WITNESS: I am. I've been serving the
6 people that I listed as respondents in these
7 matters, and as counter defendants. And I've asked
8 Alan Rose repeatedly to give me their attorneys so
9 I could contact them, but he has refused, God
10 knows, 10, 15 requests for who their lawyers are
11 that are representing them so I could properly
12 serve the lawyers. But since he refuses to give me
13 that information, yes, I've been serving the people
14 at his law firm that I am suing.

15 BY MR. ROSE:

16 **Q. Do you serve the bookkeeper at a law firm with**
17 **every piece of paper --**

18 A. It says all employees, everything. So yeah, I
19 make a -- yeah, I am suing her.

20 **Q. And do you serve every piece of paper on**
21 **everyone in all of the offices of our law firm?**

22 A. I've served you, the marshal served you or
23 somebody, right? Did they, yes or?

24 MR. ROSE: Mr. Bernstein, answer the question.

25 THE WITNESS: Well, I was just --

1 THE COURT: No. No.
2 THE WITNESS: Did I serve -- yeah, I served --
3 until you tell me who their lawyers are, I'm going
4 to keep serving to people I'm supposed to. They're
5 on the service list.

6 BY MR. ROSE:

7 **Q. Do you serve every single receptionist in both**
8 **offices?**

9 A. I served people at your office that I'm suing.

10 **Q. Well, are you going to continue to do it?**

11 A. Unless I'm ordered not to, I have to. I'm
12 serving documents that are respondents and defendants.
13 You won't give me their lawyers.

14 Who is you representing you, for example?

15 **Q. Have you served process on the receptionist or**
16 **the secretary or the associates or the legal assistants?**

17 A. Not yet. I asked you to waive it, but you
18 refused to waive yours in your own lawsuit. And you're
19 making this expensive in trying, but yeah.

20 And if they have lawyers, I'm more than happy
21 to serve their lawyers. I've asked you 100 times.

22 **Q. Have you cooperated in scheduling a date for**
23 **your deposition?**

24 A. Yes.

25 **Q. Do you believe I have the right to take your**

1 **deposition?**

2 A. Absolutely. If you served -- if -- yes, I do,
3 at this point.

4 **Q. Do you recall the Court ordering that I'm**
5 **entitled to take your deposition prior to the hearing on**
6 **your pending motions and petitions including the**
7 **petitions to remove Ted?**

8 A. Yes. But I had no hearing scheduled until
9 last week. So the 30 times you tried to schedule a
10 deposition were all abusive and harassment, and there
11 was no upcoming hearing. And I told you I was in
12 medical procedures that are causing me tremendous
13 headaches. I'm on medicines, I'm on heavy narcotic.

14 THE WITNESS: Your Honor, would you like to
15 see the list I'm on since their July hearing? I
16 brought it with me today for you. It's the Publix
17 receipts.

18 THE COURT: I don't need to see the receipts.
19 You just told me about it.

20 THE WITNESS: Well, you can see I don't have
21 teeth and I have a broken face where all my bones
22 were shattered. When the teeth are out, I have
23 extreme headaches that a mortal man wouldn't be
24 here.

25 THE COURT: All right. Let's focus.

1 THE WITNESS: I'm sorry. Yeah, I'm sorry.
2 BY MR. ROSE:

3 **Q. Did I call you a week ago to try to schedule a**
4 **hearing on September 24th, and you advised me you were**
5 **unavailable that day?**

6 A. I did.

7 **Q. Did you then call me a couple of days later**
8 **and advise that the Court had three hours available on**
9 **September 24th, and you were now available and wanted to**
10 **have your hearings heard on that day?**

11 A. Well, what happened was you were harassing me
12 to all of these -- trying to schedule all of these
13 hearings you canceled and depositions you canceled that
14 you never even notified me about. So I called the Court
15 to find out when we could have the thing that Martin
16 Colin, Honorable Martin Colin, wanted to hear next,
17 which was the removal of Ted.

18 And since you were trying to schedule all of
19 these things, I called to get it done quickly because we
20 have evidence that assets are now missing and that
21 you've told the Court one thing, which we'll hear on my
22 contempt proceeding against you next at -- that now we
23 have deposition statement that say you sold furniture --

24 THE COURT: Okay.

25 THE WITNESS: -- that you said transferred

1 before.

2 THE COURT: You're way beyond the scope of the
3 question.

4 THE WITNESS: I'm sorry.

5 MR. ROSE: Nothing further.

6 THE COURT: So before you respond, I have a
7 question --

8 MR. ROSE: I did forget one other aspect.

9 THE COURT: Sure.

10 BY MR. ROSE:

11 **Q. Did you tell us that you sent the e-mail,**
12 **privileged e-mail, to 2,000 people between the time you**
13 **received it on a Thursday evening and the following**
14 **morning when we were in front of Judge Colin?**

15 A. No. What I said was that I had sent the
16 e-mail to many of the people who were named in there to
17 be abused by you guys. And then what happened was I
18 believed I posted it on social media, where just like on
19 Facebook I have like 4,000 friends, let alone all of the
20 other places I'm socially connected, which is
21 everywhere. That's everywhere.

22 So I believe that thousands of people have
23 that information. And in fact, I'm certain quite a lot
24 of them do. And I posted things for everybody to delete
25 it, but I'm not exactly sure how that works on Facebook

1 and Instagram and everywhere else. But, okay.
2 **Q. Do you recall testifying on May 23rd that you**
3 **sent it to your friends who are lawyers, you sent it to**
4 **a number of people; you got so busy sending it to people**
5 **because it scared you that by the time you were done**
6 **sending it to people, your wife stopped you and said it**
7 **was time to go to court?**

8 A. I do recall that.

9 **Q. That would mean from 10:00 at night until the**
10 **morning when it was time to come to court, you were**
11 **sending the e-mail to people?**

12 A. Who said I started at 10:00 in the morning --
13 10:00 at night?

14 **Q. Well, you got Ted's e-mail, and then about**
15 **less than an hour, you got my e-mail telling you not to**
16 **send it to the people.**

17 **Had you sent it to anybody --**

18 A. -- until the next morning when I got up.

19 **Q. How many people have you advised --**

20 A. Every single person I sent an e-mail, and I've
21 given you and the Court copies -- and I regret that you
22 continue to try to mislead the Court -- that I have been
23 provided the e-mails that I sent and telling those
24 people to delete and destroy.

25 **Q. Well, there are about four people that you**

1 **sent e-mails that you provided as part of your --**

2 A. However many there were.

3 **Q. So how does four people equal 2,000 people?**

4 A. I just told you, on Facebook, when you post
5 something, there are thousands of people that can access
6 that publication.

7 **Q. And did you remove everything from Facebook?**

8 A. I think. It's kind of hard to know. I posted
9 people to delete it.

10 **Q. Did you tell people that they could -- they**
11 **should decide for themselves what to do with it because**
12 **you were going to appeal it?**

13 A. No. What I told them to do, if you read the
14 letter, is to delete it. I gave them the Judge's order.
15 I complied fully 100 percent with Judge Colin's order.
16 I told them to delete it, blah.

17 Then I said, because Judge Colin's order is
18 confusing, it says, "If Eliot appeals, he should,"
19 whatever.

20 So I said to everybody, I'm not a lawyer, but
21 I'm appealing this. So in the interim, I don't know
22 what you do with your copies; contact a lawyer. But you
23 misquoted and took out that little one tiny section and
24 left the two other ends off.

25 **Q. You told me --**

1 A. -- misread to some other kind of statement,
2 which is more of what's going on here, but okay. We'll
3 get to my turn next.

4 **Q. You told the people, "I'm not sure what you're**
5 **supposed to do in the meantime with your copies,"**
6 **correct?**

7 A. I told them that pending the appeal, they
8 should consult with a lawyer; that I'm not sure what to
9 do on appeal. I looked up the rules, but I'm not a
10 lawyer, and it doesn't say much about the appeal. And
11 Judge Colin's order didn't say anything about Eliot. So
12 I told them to seek legal counsel, which I thought was
13 what they should do. You knew that people were
14 objecting to destroying it.

15 **Q. Did you appeal the order?**

16 A. I haven't yet.

17 **Q. Did you advise the people after your deadline**
18 **to appeal a file [sic] that you were no longer appealing**
19 **it, and they should delete all copies and return them**
20 **and destroy them as Judge Colin ordered you to do? It's**
21 **a yes or no.**

22 A. I've already advised them to delete the e-mail
23 and what to do, and gave them the rules and gave them
24 Judge Colin's order. They're not, you know...

25 MR. ROSE: Nothing further.

1 THE COURT: Okay. So here's what I want to
2 do. Stay there, Eliot.

3 Do you have any other witnesses?

4 MR. ROSE: No.

5 THE COURT: You mentioned in opening statement
6 that there was a designation that you made -- this
7 is to Mr. Rose -- about who Mr. Bernstein should
8 serve by e-mail. I need to see that designation.

9 MR. ROSE: I'm not sure I have it. It's filed
10 with the Court. It's in the court record. It
11 would be -- let me look to see if I have a copy of
12 it.

13 MR. BERNSTEIN: Do we have it, Candy?

14 MR. ROSE: The designation only lists one
15 e-mail. It's mine only. I didn't list any
16 secondaries. And I have e-mailed it to
17 Mr. Bernstein, and he refuses.

18 Now, as a matter of law, he has no right to
19 serve somebody until they've been served with
20 process. So he can't send anything to anybody in
21 my law firm. By law, he can't --

22 THE COURT: I don't want you arguing that.

23 MR. ROSE: Sorry.

24 THE COURT: Let me do something. Let me get
25 the case back on the computer.

1 Do you know when you sent that e-mail
 2 designation?
 3 MR. ROSE: I think it was in -- I think it was
 4 in like June or July, that time frame. I think --
 5 THE COURT: Okay. Did you get --
 6 Mr. Bernstein, Eliot, did you get the designation
 7 by Mr. Rose as to who would receive e-mails?
 8 MR. BERNSTEIN: No.
 9 THE COURT: You don't have a copy of it?
 10 MR. BERNSTEIN: No.
 11 THE COURT: I'm talking to Mr. Rose now.
 12 MR. ROSE: Let me see the e-mail.
 13 MR. BERNSTEIN: And Your Honor, I've asked
 14 them if he was going to be accepting service for
 15 everybody.
 16 THE COURT: Well, service is different. This
 17 is now the issue of whether the e-mail rules are
 18 being complied with.
 19 MR. BERNSTEIN: Well, they're all respondents,
 20 all those people.
 21 THE COURT: But that's -- it may be different.
 22 MR. BERNSTEIN: Tricky?
 23 THE COURT: Hold on. I have to find this.
 24 MR. ROSE: In point of fact, the rule is self
 25 executing, Your Honor. What the rule says is if I

1 haven't filed a designation, you're to serve me at
 2 the e-mail address that I have listed with the
 3 Florida Bar. But you're not to serve parties.
 4 He continues to serve all these that are
 5 represented by counsel. And there is no right to
 6 serve anyone in my law firm other than me.
 7 I'm having the document e-mailed to me.
 8 THE COURT: You need to, because I'm just
 9 having trouble --
 10 MR. BERNSTEIN: They were all respondents in
 11 this matter, if you look at them.
 12 THE COURT: They may be, but if you're -- I'm
 13 not talking about, right now, if I'm following
 14 everybody, Mr. Bernstein's attempt to serve process
 15 on someone named in a lawsuit. That's a different
 16 subject, I think.
 17 The question is, can you e-mail papers to
 18 them?
 19 And Mr. Rose, you're saying that he shouldn't
 20 do it because he should only e-mail them to you.
 21 Mr. Bernstein says, in response, that if he
 22 e-mails something, he's not going to e-mail to
 23 another party a pleading to you, Mr. Rose, because
 24 you're not representing that party.
 25 That's what you're saying, correct,

1 Mr. Bernstein?
 2 MR. BERNSTEIN: Correct, sir.
 3 THE COURT: But they're not served yet. So
 4 the question is, can you start the e-mail process
 5 in advance of them even being served because it's
 6 the service of process that lets them know that
 7 you're a party; otherwise, they tend --
 8 MR. BERNSTEIN: But they're --
 9 THE COURT: -- they don't know the lawsuit is
 10 taking place that you filed.
 11 MR. BERNSTEIN: I also ask them all to waive,
 12 and these are lawyers and this is going to run up
 13 huge expenses to me.
 14 THE COURT: Well, I understand that.
 15 MR. ROSE: Your Honor --
 16 MR. BERNSTEIN: -- and they refused to waive
 17 THE COURT: Hold on.
 18 MR. ROSE: It does raise a completely
 19 different issue. What Mr. Bernstein -- Eliot
 20 Bernstein is an experienced litigant. Even though
 21 he's pro se, he's been litigating with people for
 22 15 or 20 years as a pro se. So what he does is he
 23 goes to the clerk's office without filing
 24 anything --
 25 MR. BERNSTEIN: I object.

1 THE COURT: Hold on.
 2 MR. ROSE: -- and again, it's my name as a
 3 respondent. If you look at the docket sheet, he
 4 has the word "respondent" after my name.
 5 THE COURT: To what pleading?
 6 MR. ROSE: Just to the docket sheet. He goes
 7 to the clerk's office, and somehow either he does
 8 it or --
 9 THE COURT: With every pleading, he serves --
 10 MR. BERNSTEIN: I paid the clerk, which you
 11 told me to pay to make them respondents. I paid \$3
 12 for each respondent. They're all listed in the
 13 Court that way. That's what was I advised to do.
 14 THE COURT: The respondent is a person who is
 15 the recipient of a petition filed by a petitioner,
 16 who I assume is Mr. Bernstein, et cetera.
 17 So if you're named a respondent, Mr. Rose,
 18 then in the heading, that's what you're talking
 19 about? You're a respondent in the heading?
 20 MR. BERNSTEIN: No, sir.
 21 MR. ROSE: I don't think it's -- I don't even
 22 understand the point of it other than it's all
 23 designed to --
 24 THE COURT: Tell me what it physically looks
 25 like, you're a respondent in the heading. Give me

37

1 an example. Show me.
2 MR. BERNSTEIN: Individually and
3 professionally.
4 THE COURT: I see that. I see your name is
5 there.
6 MR. ROSE: It's not a procedure that's
7 recognized by Florida law, but if you look on the
8 docket sheet, he lists my name --
9 THE COURT: I see, "Respondent Alan Ross,
10 personally, and Alan Rose, professionally."
11 MR. ROSE: I'm not a respondent in -- I'm a
12 counsel of record for somebody. I'm under the --
13 I'm serving as counsel in the case. And what he
14 does is he adds the name "respondent," and then he
15 says I'm a party.
16 His whole goal is to get us to quit or step
17 aside. He's already moved to disqualify us. It's
18 not a legally recognized thing to just call someone
19 a respondent.
20 THE COURT: Why don't you dismiss --
21 MR. BERNSTEIN: Respondent --
22 THE COURT: -- yourself as a party if
23 you're -- were you served with process?
24 MR. ROSE: No.
25 THE COURT: So --

38

1 MR. BERNSTEIN: You haven't been served with
2 any process, Alan?
3 THE COURT: No.
4 If you're a named party in a lawsuit, then you
5 would -- and you don't know why you're there or
6 think you shouldn't be there, you need to move to
7 dismiss yourself or strike yourself from that part
8 of the pleading, and then I can consider doing
9 that.
10 MR. BERNSTEIN: And he is served --
11 THE COURT: Stop. Stop.
12 MR. ROSE: We're talking about two different
13 things. He has now filed two counterclaims against
14 me. We're going to deal with those another day.
15 THE COURT: Okay.
16 MR. ROSE: But in the estate proceeding, I'm
17 not a party to the estate proceeding in any way,
18 shape or form. There is no basis to make me a
19 party to the estate proceeding.
20 THE COURT: But --
21 MR. BERNSTEIN: You were involved in the
22 fraud, in the forgery --
23 THE COURT: Slow down.
24 MR. BERNSTEIN: -- advancing us.
25 THE COURT: If he wants -- so here's the

39

1 question: Are you being joined as a party through
2 a pleading filed by Mr. Bernstein?
3 MR. ROSE: No.
4 THE COURT: So Mr. Bernstein, listen
5 carefully.
6 MR. BERNSTEIN: I didn't hear that. I'm so
7 sorry. I was peeling --
8 THE COURT: There is an estate case open --
9 MR. BERNSTEIN: -- my gums off.
10 MR. ROSE: In the Shirley Bernstein and the
11 Simon Bernstein Estate.
12 THE COURT: I'm looking at Simon right now,
13 which is 2012CP4391.
14 MR. BERNSTEIN: Yes, sir.
15 THE COURT: I see here that you have named as
16 a respondent Mr. Rose, personally and
17 professionally.
18 MR. BERNSTEIN: Correct.
19 THE COURT: So is there a pleading that you
20 have filed or someone else has filed in which
21 Mr. Rose is being sued in that capacity in this
22 case?
23 MR. BERNSTEIN: Yeah.
24 THE COURT: What's that pleading?
25 MR. BERNSTEIN: All of them, the petitions and

40

1 everything. I've listed him as a respondent and
2 notified him.
3 MR. ROSE: And when he is --
4 THE COURT: You listed him as a respondent.
5 MR. BERNSTEIN: But when he gets served --
6 THE COURT: Slow down. In an estate case, the
7 actions that get filed in this estate case are
8 governed by the rules of procedure. They are -- if
9 they're lawsuits, they're adversary proceedings.
10 They're either mandatory or they're discretionary.
11 You have to ask for permission and you have to have
12 a special heading for them tacked onto the
13 pleading. And I would have to see what the
14 adversary pleading is that supposedly would bring
15 Mr. Rose or any other attorney from the point of an
16 attorney to being a named party.
17 And I assume it's you who are the petitioners
18 in that actions.
19 MR. BERNSTEIN: Correct.
20 THE COURT: And so I'm going to deal with
21 that.
22 MR. BERNSTEIN: And by the way, in Florida,
23 when he accepts -- when he gets the petition served
24 on him and accepts it at his e-mail address that's
25 registered with the Court, he's accepted service of

41

1 that document. He's a respondent. He could have
2 filed an opposition pleading, but he's refusing to
3 do that.
4 By the way, he's also been served process in
5 the counterclaim of his own lawsuit he filed
6 while I'm infirmed and he forced me to do all this
7 nonsense.
8 THE COURT: Hold on.
9 MR. BERNSTEIN: Anyways, he's now been served
10 by the marshal. And that's after he waives --
11 wouldn't waive service so I had to pay 2-, 3-,
12 \$400, whatever, that I don't have as you know
13 because of the frauds that have held up my
14 inheritance. But he's now served. And he should
15 have counsel on several things.
16 He's being accused of very serious crimes;
17 fraud, legal malpractice, breaches --
18 THE COURT: Those are not crimes. You're in
19 the wrong court if he's -- you don't serve someone
20 with crimes.
21 MR. BERNSTEIN: I've served civil fraud or the
22 counts --
23 THE COURT: Civil is different than --
24 MR. BERNSTEIN: Right, civil fraud --
25 THE COURT: Be careful about your wording.

42

1 MR. BERNSTEIN: -- malpractice and about 100
2 other torts.
3 THE COURT: I see one now. Hold on. Hold on.
4 MR. BERNSTEIN: Have you notified your
5 counsel?
6 THE COURT: Mr. Bernstein, quiet.
7 MR. BERNSTEIN: I'm sorry.
8 THE COURT: Okay. So this is how I want you
9 to do it: I'm going to let you be heard, Eliot,
10 right now on the issue of compliance or not with my
11 July 18th order, of 2014, dealing with the
12 privileged letter or e-mail. Go ahead.
13 MR. BERNSTEIN: So I can call witnesses and
14 such?
15 THE COURT: Well, you can call witnesses in a
16 second, but I want you to finish your testimony
17 first because you're on the stand.
18 MR. BERNSTEIN: I'm confused.
19 THE COURT: So you're now able -- you can show
20 cause why you shouldn't be held in contempt, and
21 then you can call witnesses.
22 MR. BERNSTEIN: So I can start?
23 THE COURT: Right from there.
24 MR. BERNSTEIN: I have to get my stuff.
25 THE COURT: Go ahead.

43

1 MR. BERNSTEIN: Thank you, sir.
2 Okay. The first --
3 THE COURT: Go back there. Take your stuff
4 and go back.
5 MR. BERNSTEIN: Okay, Your Honor. He says
6 that I didn't comply. Was that the first thing?
7 THE COURT: Yes.
8 MR. BERNSTEIN: In fact, I complied early,
9 before you ever told me. I went back. The first
10 time I learned of this privileged claim, you told
11 me to read the rules; I read them. I knew I had a
12 right to challenge, but I didn't want to, you know,
13 get in trouble. I didn't quite understand what
14 happened that day in court, so I notified everybody
15 I had sent the e-mail to. Here's the rules:
16 Destroy and delete, is what it says. And you have
17 to, you know, do what you think, talk to your
18 counsel.
19 After your ruling of privilege, your order
20 said send everybody a copy of your order, notify
21 them to destroy and delete, and I did all of that.
22 Would you like to see that evidence?
23 THE COURT: Show it to Mr. Rose first.
24 MR. BERNSTEIN: Okay. Did you get copies of
25 that? Just the first page there.

44

1 THE COURT: He can look at the whole thing.
2 MR. BERNSTEIN: Oh, okay.
3 MR. ROSE: I've seen copies of certain of
4 these, but not all of them.
5 MR. BERNSTEIN: What does it say?
6 MR. ROSE: Here.
7 MR. BERNSTEIN: What does it say?
8 THE COURT: No, you're on the stand. You
9 can't ask him questions.
10 MR. BERNSTEIN: Not yet? I can call him in a
11 minute?
12 THE COURT: Right. Go back.
13 MR. BERNSTEIN: Do you have -- do you want to
14 see it?
15 THE COURT: Hand it to my bailiff.
16 MR. BERNSTEIN: It's two letters, Your Honor.
17 The first one is after your order. The first one
18 was long before your order just because I did the
19 right thing, according to what I thought was right.
20 THE COURT: Keep on going.
21 MR. BERNSTEIN: So I did notify everybody.
22 That's misstated in his petition. He's known about
23 that. He has copies of that. He's on the
24 distribution list.
25 I have submitted those to the Court as

45

1 evidence that --

2 Do you have that, honey, that proof that --

3 THE COURT: Keep on going. Keep on

4 testifying.

5 MR. BERNSTEIN: Okay. If you look in your

6 docket, I submitted those letters to the Court as

7 proof, but yet Mr. Rose continues to try to set

8 this up that I didn't comply, that I did something

9 wrong. At the very bottom of it, you'll see that I

10 put in the note to everyone, I don't know what to

11 do pending appeal, check with your lawyer. That's

12 all I said. But I had already told everybody to

13 delete and destroy according to the Judge's order,

14 which is attached herein, which I attached therein.

15 I have similarly posted some things around

16 social media, but I don't know what effect that

17 had. I don't know who read what and passed it to

18 who. I'm so linked to this world in the Internet,

19 it's hard to imagine it isn't everywhere.

20 Okay. Do you want more time?

21 THE COURT: Whatever you want to tell me.

22 MR. BERNSTEIN: You're listening or reading?

23 THE COURT: Both.

24 MR. BERNSTEIN: What was the second thing you

25 wanted to know?

46

1 THE COURT: No, I --

2 MR. BERNSTEIN: Oh, I didn't forward the

3 e-mail to anybody. Your order says don't forward

4 the e-mail. I didn't forward the e-mail. I didn't

5 publish the e-mail anywhere. I didn't republish it

6 inside any documents.

7 I did do what your order has nothing to do

8 with, which was tell people there are links that

9 has this information on the worldwide web. There

10 was nothing we could do about the fact that before

11 there was a privileged claim, it had already got to

12 reporters and others. And you know, the reporter

13 obviously is refusing. So your order says nothing

14 about even republishing it, to be quite honest.

15 But I didn't republish it. I pointed people

16 to blogs that contain lots of information,

17 including that one. I have no control over those.

18 THE COURT: What about you putting, though,

19 information about this letter in these lawsuits you

20 filed?

21 MR. BERNSTEIN: I didn't. I just put a link.

22 THE COURT: Well, okay.

23 MR. BERNSTEIN: Well, your order says don't

24 forward the e-mail to anybody. I didn't forward an

25 e-mail to anybody. I followed your order to the

47

1 letter of the law.

2 If you want to rechange it and tell me I can't

3 speak of it -- Mr. Rose doesn't even want me to

4 speak; that even though my brother went on the

5 stand and said he had a strategy, they conspired of

6 force and aggression against me, to harass me.

7 THE COURT: Stop. Let me read this.

8 Okay, go on. Anything else on this issue

9 without repeating yourself?

10 MR. BERNSTEIN: Was there anything else you

11 wanted me to address?

12 THE COURT: On this -- so let's go to the

13 deposition.

14 MR. BERNSTEIN: Okay, the deposition. Your

15 order, again, states clearly that Eliot should do a

16 deposition before his next hearings.

17 THE COURT: So when are your next hearings?

18 MR. BERNSTEIN: Okay. Well, it was just

19 scheduled last week.

20 THE COURT: For when?

21 MR. BERNSTEIN: Mr. Rose --

22 For September 24th.

23 THE COURT: Is that accurate?

24 MR. ROSE: Yes.

25 MR. BERNSTEIN: Okay. So --

48

1 THE COURT: All right. Slow down. So --

2 MR. BERNSTEIN: Yes, sir.

3 THE COURT: So here's what we're doing: When

4 do you want to take his deposition?

5 MR. BERNSTEIN: Your Honor, could I ask a

6 question?

7 THE COURT: No. Let me first get that.

8 MR. BERNSTEIN: Okay.

9 THE COURT: Does it have to do with that

10 issue?

11 MR. BERNSTEIN: It does.

12 MR. ROSE: We have --

13 MR. BERNSTEIN: No, let him go on.

14 MR. ROSE: We have other hearings this

15 Thursday. I could take it after those hearings.

16 THE COURT: This Thursday, I saw in the

17 calendar there is something for this Thursday, but

18 I'm not sure. It looks like it's a petition for

19 discharge?

20 MR. ROSE: Of Ben Brown.

21 THE COURT: Of Ben Brown, okay. I didn't get

22 that detail on there.

23 Okay. So that's not one of the hearings

24 that's referred to in the June 19th order?

25 MR. ROSE: Correct.

49

1 THE COURT: All right. So the next hearing
2 dealing with Eliot's pending motion/petitions is
3 September 24th.
4 When do you want to take his deposition?
5 MR. ROSE: I could take it on the 18th right
6 after the hearing. We could do it in the
7 courthouse, if we can get a room.
8 MR. BERNSTEIN: I'll only be able to do it
9 telephonically. I'm medically --
10 THE COURT: Well, you're going to be here,
11 though, on the 18th.
12 MR. BERNSTEIN: I probably won't.
13 THE COURT: You're not going to be here for
14 then?
15 MR. BERNSTEIN: I shouldn't even be here now.
16 THE COURT: But who's filed the petition for
17 discharge?
18 MR. BERNSTEIN: Ben Brown.
19 THE COURT: He's a curator?
20 MR. BERNSTEIN: Yeah.
21 THE COURT: And he wants to be discharged?
22 MR. BERNSTEIN: Correct.
23 THE COURT: Does anyone oppose that?
24 MR. BERNSTEIN: I think the creditors.
25 THE COURT: So you're not going to be here for

50

1 then?
2 MR. BERNSTEIN: Okay. Can I ask a question?
3 THE COURT: No, no. So here's the way this is
4 going to work, this is really simple. The order
5 that I entered on June 19th says what it says.
6 That usually is instructive enough not to cause a
7 problem, but that doesn't work in this case.
8 So are you agreeing that he can appear by
9 phone? If it's yes, it's yes. If it's no, I'll do
10 something else.
11 MR. ROSE: I'd prefer -- we're all in Boca.
12 It's not at a distance. It's very difficult to
13 take a telephone deposition.
14 THE COURT: So this is the way it works. And
15 we're dealing with this today so you're not leaving
16 the courthouse without this. You have hearings on,
17 what I'll call, Eliot's pending motions. They are
18 what they are.
19 They have a right to take your deposition in
20 person before those hearings. The hearings are set
21 for the 24th. If you want those hearings still on
22 the 24th, you have to sit for your deposition. If
23 you can't sit for the deposition for medical or
24 other reasons --
25 MR. BERNSTEIN: Well --

51

1 THE COURT: Hold on -- then I have to move
2 both.
3 MR. BERNSTEIN: The hearings?
4 THE COURT: And the deposition.
5 MR. BERNSTEIN: Okay. I did want them later.
6 It's just that we have serious problems.
7 THE COURT: This is scheduling --
8 MR. BERNSTEIN: There is one more thing. No
9 I get that. I'm more than happy to schedule, even
10 though I don't feel well and it's wrong.
11 The bottom line is, up till last week,
12 Mr. Rose has scheduled depositions without my
13 knowledge, without my consent, filed, wasted the
14 Court's time, money, the State's money, everybody,
15 to cancel it because it was bogus.
16 THE COURT: Let's --
17 MR. BERNSTEIN: Wait, wait, wait.
18 THE COURT: No, I want to get to --
19 MR. BERNSTEIN: This is very important.
20 THE COURT: I'm going to get to the --
21 MR. BERNSTEIN: Okay.
22 THE COURT: -- other issues in a little bit.
23 Let me deal with this.
24 MR. BERNSTEIN: Okay.
25 THE COURT: Are you going to be able to sit

52

1 for your deposition between now and the 24th?
2 MR. BERNSTEIN: Sure.
3 THE COURT: Okay. So we can keep the --
4 MR. BERNSTEIN: Can we do --
5 THE COURT: Hold on. The answer is you want
6 to be able to keep the 24th hearing?
7 MR. BERNSTEIN: Yes.
8 THE COURT: So if you do that, you have to be
9 able to sit.
10 MR. BERNSTEIN: Can I --
11 THE COURT: Here's what I'm going to do. No,
12 I'm not going to barter with you folks with this
13 because time is important for this morning. Before
14 you leave, you're going to get a date that's
15 agreeable.
16 MR. BERNSTEIN: Can I make a statement?
17 THE COURT: Yes.
18 MR. BERNSTEIN: I am on heavy medication.
19 THE COURT: That's why I'm --
20 MR. BERNSTEIN: Wait. Here. Right.
21 THE COURT: -- giving you a chance to --
22 MR. BERNSTEIN: That's exactly right. And I
23 am going to get off it for the hearing to be a
24 little bit cognizant. And so I would like to take
25 the deposition, since I am going through procedures

53

1 right up to that point, the day before or so
2 because that's appropriate.
3 THE COURT: Well, the only problem with that
4 is if you get it the day before and they want to be
5 able to use your deposition at the hearing --
6 MR. BERNSTEIN: Okay, two days before?
7 THE COURT: -- expedite it, it's a real
8 expensive procedure.
9 MR. BERNSTEIN: They did that with Don Tescher
10 (phonetic) and wasted all our money.
11 THE COURT: Well, I'm just --
12 MR. BERNSTEIN: So I'm just saying I have a
13 medical reason to do it this way.
14 THE COURT: Can you take it two days before?
15 MR. BERNSTEIN: Otherwise, they're putting me
16 on all the narcotics --
17 THE COURT: Is that better for you? Hold on.
18 Let's look at your schedule. That's a Monday
19 because the hearing is on a Wednesday.
20 MR. ROSE: I'll take it Monday, and I'll
21 decide -- we start early Monday and do it --
22 THE COURT: Let's do this right now. Pick the
23 time and the place.
24 MR. ROSE: 9:00 a.m. We had to pick the court
25 reporter that was somewhere in Boca Raton,

54

1 central --
2 THE COURT: Pick it now. Do you want to do it
3 at the court reporter's office?
4 MR. ROSE: We noticed it at the court reporter
5 that is behind One Boca Place on Glades, somewhere
6 near between Glades and Military.
7 THE COURT: Do you know where he's talking
8 about?
9 MR. BERNSTEIN: My wife probably knows.
10 THE COURT: Do you know where he's talking
11 about?
12 MS. BERNSTEIN: Yes, but can we not make it
13 9:00? Can we make it closer to 10:30, 11:00
14 because we have kids at school that start at 9:00.
15 THE COURT: Well, I want him to finish. I
16 don't want it to get postponed.
17 MR. ROSE: I would do it in this building if
18 we --
19 THE COURT: I don't think we do -- we used to,
20 but they don't do that anymore.
21 MS. BERNSTEIN: Where was the location again?
22 MR. BERNSTEIN: Call us with the location.
23 We're pretty amenable.
24 THE COURT: This is going to go in the form of
25 an order, that's why.

55

1 So the 22nd. Start at 10:00, Mr. Rose --
2 MR. ROSE: Okay.
3 THE COURT: -- at the court reporter's office.
4 Have someone from your office, Mr. Rose, now get
5 the name of that reporter because I want it in the
6 order, and I'm going to serve it on both you and
7 Mr. Bernstein.
8 MR. ROSE: Okay.
9 THE COURT: And that will be your deposition.
10 And that deposition will concern the pending
11 matters that are being set for the 24th.
12 MR. BERNSTEIN: Only, correct?
13 THE COURT: You have tons of matters. So the
14 way it works is that's the scope of the order.
15 Mr. Bernstein, if you want to make an objection,
16 okay, you don't stop the deposition; that's the
17 rule. You make an objection for record, and then I
18 rule on the objection if they want to use the
19 deposition at a hearing. But there is no such
20 thing as canceling, walking out --
21 MR. BERNSTEIN: Protective order, I believe.
22 THE COURT: But you --
23 MR. BERNSTEIN: Move for that? Okay.
24 THE COURT: You move for that, and then you
25 continue the deposition.

56

1 MR. BERNSTEIN: Okay.
2 THE COURT: Because here's the thing: You
3 want these hearings set --
4 MR. BERNSTEIN: I'm fine with the deposition,
5 Your Honor.
6 THE COURT: -- you get deposed.
7 MR. BERNSTEIN: I don't know why we need one.
8 I'm going to be here for the hearing. So he could
9 ask me the questions directly.
10 THE COURT: He wants to know in advance. So
11 he can do that.
12 MR. BERNSTEIN: God bless him.
13 THE COURT: So that takes care of that issue
14 here.
15 MR. BERNSTEIN: And is it limited in scope
16 just so that I might not understand --
17 THE COURT: -- to the matters that --
18 MR. BERNSTEIN: -- to removing Ted?
19 THE COURT: Or any other pending motions that
20 I'm hearing on the 24th.
21 MR. BERNSTEIN: Just the motion to remove Ted.
22 MR. ROSE: We have three hours reserved.
23 There are a number of other really important
24 matters that we could hear if there's time. Can we
25 set them for the same time, and if we don't have

57

1 time --

2 MR. BERNSTEIN: No.

3 MR. ROSE: -- and if we do have time, we can

4 reach them?

5 THE COURT: Well, I don't know what those

6 matters are. And the problem is that -- I can give

7 you other hearing dates. If you want to have

8 another hearing date on one of your motions,

9 Mr. Rose, on Ted's side, I'll give you a hearing

10 right away. And I'll give you a hearing on that.

11 MR. ROSE: I'm running into the same issues

12 with the scheduling; they're not agree to schedule

13 them. We had times available --

14 THE COURT: All right. So then if you tell

15 me --

16 MR. BERNSTEIN: I need all that time.

17 THE COURT: When you want -- okay. So he has

18 his hearing date on the 24th. If you want another

19 date --

20 MR. ROSE: I'll schedule them separately.

21 THE COURT: No, this morning, when I'm in

22 another hearing. But you'll sit outside and

23 schedule. If you have a problem, you'll come back

24 in.

25 MR. BERNSTEIN: Can that be after my medical

58

1 treatments? I've told him --

2 THE COURT: You could have the hearing, but

3 you'll schedule it -- you'll talk to him about when

4 you want it scheduled.

5 MR. BERNSTEIN: Okay. I've already told him

6 after the 10th.

7 THE COURT: It can't be sometime way down the

8 road.

9 MR. BERNSTEIN: I told him after the 10th, and

10 you're not even available till then anyway

11 according to Sherry.

12 THE COURT: So we'll work on that.

13 MR. BERNSTEIN: Okay.

14 THE COURT: So now, we've got to move this a

15 little bit. Let me go to the third issue, the

16 e-mail.

17 Okay. Mr. Bernstein?

18 MR. BERNSTEIN: Yes, sir?

19 THE COURT: Your list of respondents seem to

20 be growing, okay? As the pleadings continue,

21 they're getting longer and longer.

22 MR. BERNSTEIN: No, Your Honor.

23 THE COURT: They're not?

24 MR. BERNSTEIN: No.

25 THE COURT: I mean --

59

1 MR. BERNSTEIN: It's been like that since

2 going back to time.

3 THE COURT: You have John and Jane Does 1

4 through 5,000.

5 MR. BERNSTEIN: Only if it ties into my

6 federal RICO --

7 THE COURT: But this is my case.

8 MR. BERNSTEIN: But it might jump into another

9 court.

10 THE COURT: And I saw recently, and I'm not

11 sure where the pleading was, but if it gets brought

12 to my attention that you put myself and Judge

13 French down in the heading of the case, or in a sub

14 heading of the case. You actually have us in the

15 pleadings.

16 MR. BERNSTEIN: As material and fact witnesses

17 possibly.

18 THE COURT: Yeah, but I mean, you can't just

19 do things like that unless --

20 MR. BERNSTEIN: I'm filing a countercomplaint

21 Your Honor. That's where it's at.

22 THE COURT: But you can't put a counter -- but

23 you haven't filed one, and you're putting us --

24 MR. BERNSTEIN: I have filed one.

25 THE COURT: But judges' names are being put in

60

1 the heading of the case as a witness. Witnesses

2 don't go in headings.

3 MR. BERNSTEIN: Oh, I'll move it down then,

4 I'm sorry.

5 THE COURT: All right. We're not -- we're

6 judges. So we're trying to do this thing as

7 dignified as possible.

8 I think I have an order prepared to sua sponte

9 strike those paragraphs because you're not allowed

10 to do that. That violates significant rules to do

11 that. We're not witnesses --

12 MR. BERNSTEIN: Well --

13 THE COURT: We're not witnesses to events that

14 take place in the courtroom.

15 MR. BERNSTEIN: Well, these are --

16 THE COURT: No, no, I'm not going to argue

17 with you on that.

18 MR. BERNSTEIN: Oh, okay.

19 THE COURT: So you need --

20 MR. BERNSTEIN: So move it down?

21 THE COURT: No. You need to eliminate us from

22 the heading, and I'm striking I think it's

23 paragraphs 53 and 54 of that -- whatever that

24 lawsuit was that tries to say, as a pleading in the

25 case, that you want Judge French and I to be

61

1 witnesses to different things that you say happened
2 improperly by others in our courtroom. That's not
3 a proper pleading. That violates civil rules, and
4 you're barking up the wrong tree when you start to
5 do that stuff. So I'm going to be striking that.
6 MR. BERNSTEIN: Okay.
7 THE COURT: I'm the judge, you're the party.
8 MR. BERNSTEIN: I got it.
9 THE COURT: Let's leave it that way.
10 MR. BERNSTEIN: I will. I respect that.
11 THE COURT: On the e-mail things, here's what
12 I'm hearing, and I want to make sure I understand
13 it. You have filed an action. It could be in the
14 form of a countercomplaint. And you're naming
15 individuals from Mr. Rose's office as parties. So
16 far true?
17 MR. BERNSTEIN: Yes, sir.
18 THE COURT: And you're trying to serve them as
19 parties?
20 MR. BERNSTEIN: Correct, sir.
21 THE COURT: Okay. And you haven't yet served
22 them, and no one has made --
23 MR. BERNSTEIN: I served Mr. Rose.
24 THE COURT: But you haven't served the
25 individuals --

62

1 MR. BERNSTEIN: Well, I have at their e-mail
2 addresses that are --
3 THE COURT: Right, but I'm talking about
4 service now, because you're talking about process.
5 MR. BERNSTEIN: Oh, no. Exactly. I've asked
6 them to waive, and I'm trying to get that to save
7 us a few thousand dollars.
8 THE COURT: Pending serving these individuals,
9 who you want to name as party defendants or
10 respondents in your action, you're e-mailing things
11 to them; is that accurate?
12 MR. BERNSTEIN: Sure. The countercomplaints
13 and waiver of service saying, will you please waive
14 and --
15 THE COURT: Is that what you're getting?
16 MR. ROSE: That's not exactly true, Your
17 Honor. What's happening is, right now there are
18 four different things that -- in the Estate of
19 Shirley Bernstein, we aren't parties. There is no
20 claim made against us.
21 MR. BERNSTEIN: There is.
22 MR. ROSE: Other than me appearing in the
23 case, there's nothing to do -- and he's e-mailing
24 everything in the Shirley Bernstein to every
25 member, every person in my firm, including

63

1 secretaries. Could you imagine suing General
2 Motors and e-mailing all of their 50,000 employees?
3 Number two, in the Simon Bernstein Estate,
4 we're not in that case. It has nothing to do with
5 it.
6 There are two other things he sued us, and he
7 sued me in the case called Oppenheimer, which is
8 pending before Your Honor. Now, in that case, I've
9 been served, but no one else has been served and no
10 one else is really named. He didn't name the
11 secretary. He didn't name those people.
12 And in this case, we filed a trust
13 construction case. One of the important issues we
14 want to have heard is my motion to sever his
15 counterclaim. Your Honor has already addressed his
16 counterclaim briefly by saying he joined you as
17 a --
18 MR. BERNSTEIN: Wait. You're defending in
19 that case, and you accepted service. So who are
20 you representing right now?
21 MR. ROSE: Your Honor --
22 MR. BERNSTEIN: Alan?
23 THE COURT: Stop.
24 MR. ROSE: In the counterclaim --
25 MR. BERNSTEIN: Well, he's talking a different

64

1 case right now, Your Honor.
2 THE COURT: All right. Hold on.
3 MR. BERNSTEIN: And he's a defendant who has
4 been served in that case, his own lawsuit.
5 THE COURT: So here's what we're doing. I'm
6 going to case manage this a little bit better. So
7 let me just give you a rule that I'm going to rely
8 upon.
9 MR. BERNSTEIN: Your Honor, I have to ask
10 Alan --
11 THE COURT: Stop, stop. Stop for a second.
12 MR. BERNSTEIN: Okay.
13 THE COURT: So in the Rule 5s, which are the
14 probate rules, it has some really specific guidance
15 here.
16 So here's what we're doing from now on:
17 Whether it's in an estate case or in a trust case
18 that's filed before me, two things I want. This is
19 ordered that must happen from here on in. If there
20 is a desire on anyone to file an adversary
21 proceeding, which is anything other than the
22 ordinary administration of the estate or the trust,
23 okay, they must do the following first: They have
24 to set a hearing before the Court. They can
25 prepare the purported pleading. They bring the

65

1 pleading, unfiled with the clerk, before me, and I
2 determine whether it's going to be allowed to be
3 filed with the clerk, and start the process under
4 the rule as an adversary proceeding. That's one.
5 That's Rule 5.025.
6 But I don't want -- I'm modifying the rule a
7 little bit because I don't even want it served in
8 clerk's office. The clerk is getting bombarded
9 here unnecessarily.
10 I'm going to look at the lawsuit, okay? I'm
11 going to see how it's styled, and then I'll
12 determine whether it meets the rules for an
13 adversary proceeding by the petitioner versus the
14 respondent in the particular case that's filed. So
15 I'll determine that. That's one.
16 MR. BERNSTEIN: Does that apply to the
17 counterclaim? I mean, I've been served --
18 THE COURT: Well, when --
19 MR. BERNSTEIN: -- and I have a time limit.
20 THE COURT: When you say you have, a
21 counterclaim, there's a complaint filed in what
22 case?
23 MR. BERNSTEIN: Two cases, Oppenheimer and
24 then Alan Rose sued me the other day in a -- and
25 served me, and I had an answer a counterclaim

66

1 while I was not well.
2 THE COURT: The answer is yes. The answer is
3 yes, I want to see it. I want to see it all.
4 MR. BERNSTEIN: I filed that --
5 THE COURT: I want to see it all.
6 Now, the other rule -- and you're writing this
7 in the order, and so Mr. Bernstein gets it --
8 everybody needs to remember that there is a rule,
9 5.020. So your wife is now taking that number.
10 Let me read you something about what that rule
11 says. "When you plead something, the pleading,
12 called the petition, shall contain a short and
13 plain statement of the relief sought, short
14 statement of the grounds, and short statement of
15 the jurisdiction of the court." That's what goes
16 in a pleading, okay?
17 Is there a word that I've been repeating in
18 that last dialogue that should mean something to
19 everybody? What do you think the operative word
20 is?
21 MR. BERNSTEIN: Short.
22 THE COURT: Short. Short.
23 MR. BERNSTEIN: But there's a lot of crimes.
24 THE COURT: But it's designed to be a short
25 pleading.

67

1 MR. BERNSTEIN: Okay, but I'm not a lawyer.
2 THE COURT: But Mr. Bernstein, there is no way
3 in any of these actions that 100 pages is a short
4 pleading. So you need to be able to have that in
5 mind. Understand you don't prove your case in your
6 pleading; it's a notice pleading.
7 If you look at, for example, the Supreme Court
8 forms, on a simple matter, which is there is an
9 action in county court that the Supreme Court gives
10 you the form on. If you loan someone \$100 and they
11 don't pay you back, here's what you write in the
12 lawsuit. You write, "I loaned John \$100. He
13 hasn't paid me back. I want a judgment for \$100."
14 You don't put, "I loaned John \$100. He's an
15 SOB. He's using it for this."
16 Maybe all of that stuff is true and maybe you
17 need to prove that at trial, but that's not how you
18 plead it. The Supreme Court gives examples of
19 lawsuits. They're all less than a page.
20 MR. BERNSTEIN: Your Honor --
21 THE COURT: So you may need more than a page,
22 but you're going to pay attention to that rule.
23 MR. BERNSTEIN: Can I ask you a question?
24 THE COURT: Not yet. I'm finishing my order.
25 MR. BERNSTEIN: Okay, no problem.

68

1 THE COURT: So we're going to go ahead now and
2 modify all of the lawsuits to comply with this
3 order, okay?
4 So now that will take care of the -- I've
5 dealt with Item 2 and 3. Now let's go back to
6 No. 1.
7 MR. BERNSTEIN: Okay, Your Honor.
8 THE COURT: Hold on. I'm not done. I have to
9 finish my ruling. I have to get rid of you folks.
10 MR. BERNSTEIN: I'm not sure exactly what that
11 meant just now.
12 THE COURT: What?
13 MR. BERNSTEIN: Meaning I filed
14 countercomplaints. I'm serving them. I've got --
15 THE COURT: Well, you filed them already. I'm
16 not going to unfile them.
17 MR. BERNSTEIN: Oh, okay.
18 THE COURT: I want to see all of the things
19 that are pending. Don't file anything new in the
20 way of lawsuits, petitions, counterpetitions,
21 adversary proceedings without first bringing them
22 in here unfiled for me to review.
23 If you file them, don't do anything else on
24 them until you bring them before me so I can see
25 what they are. And make sure -- because you're

69

1 talking about not wasting time, Mr. Bernstein, and
2 I agree with you there because time is money in
3 this business, to make sure that the matter is in
4 the right court, in the right case, and is going to
5 be able to go through the system the way it's
6 supposed to go as opposed to having to be bombarded
7 with motions that waste a lot of time and money.
8 So I'll review them.
9 MR. ROSE: My --
10 MR. BERNSTEIN: Your Honor --
11 THE COURT: Hold on.
12 MR. ROSE: What I would request the Court to
13 do is to stay my complaint and his counterclaim.
14 No one will have to be reserved. Everyone who has
15 already been served will be deemed to be served. But
16 stay them both until we have both filed --
17 MR. BERNSTEIN: Are you doing that as a
18 defendant?
19 THE COURT: He's saying stay his action
20 against --
21 MR. BERNSTEIN: He's been served --
22 THE COURT: Listen to me.
23 MR. BERNSTEIN: Okay.
24 THE COURT: I'm repeating what he said. He's
25 not saying just your side. He's saying both sides.

70

1 MR. BERNSTEIN: I don't want my side to be
2 stayed.
3 THE COURT: I know, but I'm going to do that
4 because I want to see -- you know, we've got to get
5 a grasp. You know, Eliot --
6 MR. BERNSTEIN: I didn't sue him. He sued me.
7 I'm just responding within a legal time.
8 THE COURT: -- his suit against you and see if
9 I think it's proper as well.
10 MR. BERNSTEIN: Oh, okay. I thought you were
11 reading this stuff.
12 THE COURT: Listen to what I'm saying.
13 MR. BERNSTEIN: Okay.
14 THE COURT: So I'm going to look at all it of.
15 MR. ROSE: I'll enter the order saying staying
16 my case, both sides, until it's --
17 THE COURT: I've got to get done here.
18 MR. ROSE: Okay.
19 THE COURT: So the question is, is Eliot in
20 contempt of violation of the July 18th --
21 MR. BERNSTEIN: Do I get to put on my side of
22 this?
23 THE COURT: Not yet because --
24 MR. BERNSTEIN: How are we doing that
25 without --

71

1 THE COURT: Because if you'll listen to me,
2 you'll hear it.
3 MR. BERNSTEIN: Okay.
4 THE COURT: So here's the problem: The e-mail
5 from Eliot seems like he did what 9A, B, and C did.
6 What I see he's done also is he puts reference to
7 that e-mail in the pleadings, correct?
8 MR. ROSE: Correct.
9 THE COURT: And that's what I want to be able
10 to see because here's the -- so technically, Eliot,
11 you're correct that I didn't put in my e-mail not
12 to publish anything about that communication in
13 other media --
14 MR. BERNSTEIN: I didn't publish that.
15 THE COURT: No, no. Publishing meaning
16 referred to it in your pleadings, which you did. I
17 read it.
18 MR. BERNSTEIN: No, that I agree, right.
19 THE COURT: So I didn't -- because it's not
20 always easy to think about, when I style an order
21 like this, every possible way someone might stretch
22 this rule.
23 So I'm going to -- here's my ruling: I'm
24 deferring on the contempt ruling on violation of
25 the July 18th order. But I'm going to take up

72

1 through what would be at the next hearing that we
2 have on this matter, a consideration of a motion to
3 strike those allegations that you say violate the
4 intent of the privileged communication law. And I
5 may have to remove them, okay? And that's the idea
6 here. So we're going to have to kind of cleanse
7 it, okay, a little bit to do this the right way.
8 But now, Eliot, one final word. That's my
9 ruling. I don't need any other evidence. You can
10 have a seat. Go ahead.
11 MR. ROSE: Your Honor --
12 MR. BERNSTEIN: Do I get --
13 THE COURT: No, because I'm done.
14 MR. BERNSTEIN: But I've got a side that
15 hasn't been --
16 THE COURT: I didn't hold you in contempt. Do
17 you want me to consider your side and reconsider?
18 MR. BERNSTEIN: Yeah.
19 THE COURT: I didn't hold you in contempt.
20 MR. BERNSTEIN: No, I know, but I've got a
21 counter to this that I want to ask him some
22 questions. I just want to put him on the stand.
23 THE COURT: A counter to what?
24 MR. BERNSTEIN: Well, I don't think this
25 was -- this filing was contempt. I think it was

73

1 harassment, it was frivolous --
2 THE COURT: It's a proper way of doing it.
3 MR. BERNSTEIN: Well, my question is this,
4 Your Honor.
5 THE COURT: What?
6 MR. BERNSTEIN: Ted Bernstein, why is this
7 happening in the Estate of Simon, meaning there was
8 a privileged letter that my brother sent me some
9 letter that wasn't a lawyer. You knew the whole
10 story. Why is this in the Estate of Simon? Why
11 has Alan Rose chose to file this --
12 THE COURT: This order I entered is in the
13 Estate of Simon's case.
14 MR. BERNSTEIN: I know, but he has no right to
15 be filing it in the Estate. But you already
16 ordered a curator --
17 THE COURT: If I entered an order, if I
18 entered an order in the case --
19 MR. BERNSTEIN: I know, but why are we hearing
20 this here? Alan Rose is bringing things into the
21 estate where we already have a curator and a PR
22 now.
23 THE COURT: Right, but he's --
24 MR. BERNSTEIN: Why he is conducting this
25 hearing --

74

1 THE COURT: I understand that. He's
2 conducting it because he -- "he," Mr. Rose -- is
3 allowed to go forward on matters even though the
4 PR, who I think is Mr. O'Connell -- and I forgot
5 who we had for him -- hasn't done that. So these
6 are --
7 I've looked at your motion. He wants to
8 schedule your deposition. He has a right to be
9 able to do that.
10 MR. BERNSTEIN: Under this? Under Simon's
11 Estate?
12 THE COURT: Wherever it's noticed. It was
13 noticed --
14 MR. BERNSTEIN: Well, like the deposition was
15 noticed in Shirley.
16 THE COURT: Hold on. No, I'm looking at it.
17 The order entered was in Simon.
18 MR. BERNSTEIN: But you're ruling on things
19 from Shirley's Estate, like production --
20 THE COURT: It says Ted's Bernstein's motion.
21 I'm not going to revisit this. That's my order.
22 MR. BERNSTEIN: Can I ask you another
23 question? You're talking about me having counsel
24 and not being -- you know, how to file. These are
25 estate actions brought against me as a beneficiary

75

1 who's already been injured by fraud, forgery --
2 THE COURT: Slow down.
3 MR. BERNSTEIN: My children have been harmed,
4 et cetera. Money has been cut off. That's life
5 support money to us.
6 THE COURT: Mr. Bernstein, what do you want to
7 tell me?
8 MR. BERNSTEIN: I'm asking you, because it
9 benefits the Estate, obviously they're bringing all
10 these actions, and it's obvious I need counsel.
11 THE COURT: Get to the bottom line.
12 MR. BERNSTEIN: Can you approve that the
13 Estate pay for my counsel?
14 THE COURT: If I can -- so here's the answer
15 to that: How do I legally do that, is the answer.
16 And if you've hired a lawyer or spoke to a lawyer,
17 then why don't you ask the lawyer if it's legally
18 allowed?
19 Remember, I can't give you a legal opinion. I
20 have to --
21 MR. BERNSTEIN: It is legal --
22 THE COURT: Then have the lawyer file the --
23 MR. BERNSTEIN: I did file a motion with you
24 for legal fees, to compel them to pay legal fees.
25 THE COURT: Have your lawyer, have your

76

1 purported lawyer bring that matter before me.
2 MR. BERNSTEIN: He won't represent me until I
3 pay him.
4 THE COURT: He can represent you on a matter
5 to determine whether I'll have the estate pay for
6 him or not. He has to come forward on that.
7 MR. BERNSTEIN: Wait, how do you say that?
8 One more. No, I'm listening.
9 THE COURT: He can bring a matter before me to
10 determine whether the Estate should pay for him.
11 MR. BERNSTEIN: And then you rule on that?
12 THE COURT: And then I'll rule on it, sure.
13 There is nothing wrong with ruling on that. If
14 it's legal --
15 MR. BERNSTEIN: Well, it saves you a headache
16 and me a headache.
17 THE COURT: You know what, we don't want
18 headaches.
19 But we need these pleadings to be,
20 Mr. Bernstein, we need these pleadings to be
21 contained a little bit better. We need to have a
22 more sensible direction of the service list. We
23 need to focus in on who it is that really is the
24 focus of the action or the adversary proceeding.
25 And here's my final word on this, and you're

77

1 pro se. So what I tell pro ses and I tell this to
2 lawyers, the idea of litigation is to win, okay?
3 True? Is to win, right? You want to win in court?
4 MR. BERNSTEIN: Uh-huh.
5 THE COURT: Do you agree?
6 MR. BERNSTEIN: Yeah.
7 THE COURT: So this is a non-jury proceeding.
8 So let's finish that sentence: You want to win in
9 court by the judge ruling in your favor. That
10 should be the goal, true?
11 MR. BERNSTEIN: True.
12 THE COURT: Okay. So you have to always, as
13 lawyers and pro ses, what you have to do is step
14 back and say, how do I win? What is it that I need
15 to do to win? Winning isn't necessarily upsetting
16 the other side.
17 I really don't get upset, you know. It's a
18 little bit of a different thing because I'm not the
19 party to this.
20 But the idea is, is that you have to be able
21 to play this game to win at it. And there is a
22 certain way of doing it. There is a certain style.
23 The more you focus in on the things that will
24 help you win, the better for you. The more you
25 cloud those cases, the more you throw stuff into

78

1 the pot that is not directed to winning, the more
2 you make your path difficult, because that's more
3 of the clouds that I have to pull aside to be able
4 to figure out the nature of what it is that maybe
5 you have a good case on --
6 MR. BERNSTEIN: They're the ones suing me.
7 THE COURT: But maybe I won't be able to find
8 it because there is all this other stuff in there.
9 That's directed to everybody, okay?
10 But they know this because they're trained
11 lawyers. But you need to --
12 MR. BERNSTEIN: They're the ones filing all of
13 these pleadings on me and making me to respond --
14 THE COURT: I'll look at it all. Write the
15 order up.
16 MR. BERNSTEIN: One more second. I didn't get
17 to put on --
18 THE COURT: On what?
19 MR. BERNSTEIN: I filed a response to theirs.
20 THE COURT: But that's not a motion. That's
21 your response.
22 MR. BERNSTEIN: Yeah, no, I filed a motion.
23 THE COURT: No, no.
24 MR. BERNSTEIN: Three components to hear
25 today.

79

1 THE COURT: I don't have a motion for contempt
2 sent by you.
3 MR. BERNSTEIN: Yeah, you do.
4 THE COURT: Where is there a motion? I don't
5 have that notice.
6 Do you have that?
7 MR. ROSE: (Non-verbal response).
8 MR. BERNSTEIN: I filed it on Friday to be
9 heard here.
10 THE COURT: You can't. You can't file
11 something on Friday to be heard on --
12 MR. BERNSTEIN: Why? They do. They did last
13 time.
14 THE COURT: Do two wrongs make a right?
15 All right. Feel better with your mouth.
16 Write the order and deal with the deposition.
17 We've got to get you folks out. It's 11:15. I
18 haven't even heard my 10:45 yet.
19 MR. ROSE: Your Honor, I think your ruling is
20 that he hasn't violated your order yet, but
21 shouldn't your order -- no lawyer could republish
22 the thing that they know is privileged, so can we
23 amend your order so he can --
24 THE COURT: Here's the thing: I'm going to
25 look at more -- at a separate hearing what's been

80

1 filed. File the motion to strike and remove, and
2 I'll put it into perspective there. But nothing
3 else filed in the form of pleadings. Don't --
4 MR. BERNSTEIN: I have to --
5 THE COURT: -- until you come before me. I
6 have time. You need to do it. I'll get you in
7 right away. Okay, bye.
8 MR. BERNSTEIN: Wait, wait. I filed things in
9 response to these lawsuits.
10 THE COURT: I'm not undoing what's been filed,
11 but no more action on them. I've stayed
12 everything.
13 MR. BERNSTEIN: Even in Oppenheimer?
14 THE COURT: Even the Oppenheimer.
15 MR. BERNSTEIN: Everything?
16 THE COURT: I'm staying --
17 MR. BERNSTEIN: So should we notify that guy?
18 THE COURT: Notify what you want. Yeah,
19 notify everybody on that stuff.
20 MR. BERNSTEIN: That everything is stayed?
21 THE COURT: Everything is stayed. We can look
22 more carefully at the pleadings in the case.
23 MR. ROSE: Is he prohibited from e-mailing
24 everyone in my firm?
25 THE COURT: Yeah, yeah. No more e-mailing.

1 MR. ROSE: I have an order on that.
 2 THE COURT: You're not e-mailing -- no, there
 3 is nothing to -- there is no more notices of
 4 hearing, Mr. Rose. No more e-mailing to the crew.
 5 It's unnecessary to do that.
 6 MR. ROSE: I have an order in each of the
 7 three cases.
 8 THE COURT: You don't need to do that until I
 9 determine they're proper parties.
 10 MR. BERNSTEIN: Okay.
 11 THE COURT: Okay. You got it. Goodbye. Go
 12 outside and work on the deposition. You need to
 13 meet outside to finish the deposition place.

14 (The hearing was concluded.)
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1 C E R T I F I C A T E
 2
 3 STATE OF FLORIDA
 4 COUNTY OF PALM BEACH
 5
 6
 7 I, Jeana Kim, Registered Realtime Reporter,
 8 State of Florida at large, certify that I was authorized
 9 to and did stenographically report the foregoing
 10 proceedings and that the transcript is a true and
 11 complete record of my stenographic notes.

12 Dated this 16th day of September, 2014.
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 Jeana Kim, CRR, RMR, FPR, CLR

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A					
\$100	67:10,12,13 67:14	ago	27:3	argue	60:16
\$3	36:11	agree	10:16 15:18 20:1 57:12 69:2 71:18 77:5	arguing	32:22
\$400	41:12	agreeable	52:15	aside	37:17 78:3
a.m.	1:23,23 53:24	agreed	10:18	asked	24:7 25:17 25:21 33:13 62:5
able	7:2 42:19 49:8 51:25 52:6 52:9 53:5 67:4 69:5 71:9 74:9 77:20 78:3,7	agreeing	16:1 50:8	asking	75:8
Absolutely	17:1 26:2	agreement	1:4 10:22	aspect	28:8
abused	28:17	ahead	17:2 22:6,25 42:12,25 68:1 72:10	assets	27:20
abusive	26:10	airport	7:24	assistant	14:17
accept	7:25	Alan	3:3 4:6 21:10 23:5,14 24:8 37:9,10 38:2 63:22 64:10 65:24 73:11,20	assistants	25:16
accepted	40:25 63:19	ALEXANDRA	1:7	associates	25:16
accepting	33:14	allegations	72:3	assume	36:16 40:17
accepts	40:23,24	alleged	23:7	attached	45:14,14
access	30:5	allow	8:7	attempt	34:14
accessible	8:18	allowed	14:8 15:19 60:9 65:2 74:3 75:18	attempted	23:5
accurate	47:23 62:11	amenable	54:23	attempts	18:5
accused	41:16	amend	79:23	attention	6:1 59:12 67:22
act	15:18	Amended	1:4	attorney	40:15,16
action	61:13 62:10 67:9 69:19 76:24 80:11	answer	24:24 52:5 65:25 66:2,2 75:14,15	attorneys	24:8
actions	40:7,18 67:3 74:25 75:10	anybody	14:11 20:18 29:17 32:20 46:3,24,25	August	22:10
added	5:17	anymore	54:20	authorized	82:8
address	5:5 24:2 34:2 40:24 47:11	anyway	9:7 58:10	available	19:10 27:8,9 57:13 58:10
addressed	63:15	Anyways	41:9	aware	5:14
addresses	14:13 19:4 62:2	apologize	6:22,24 9:12 22:21		
adds	37:14	appeal	30:12 31:7 31:9,10,15,18 45:11	B	
administration	14:7 64:22	appealable	11:21	B 1:7,9,9,10,10	
administrative	7:6	appealed	11:20,24	3:3 71:5	
admissions	21:2,14	appealing	30:21 31:18	back	10:6 11:16 14:2 32:25 43:3 43:4,9 44:12 57:23 59:2 67:11 67:13 68:5 77:14
advance	35:5 56:10	appeals	30:18	bailiff	44:15
advancing	38:24	appear	12:25 13:5 50:8	Bar	34:3
adversary	40:9,14 64:20 65:4,13 68:21 76:24	appearances	3:1 4:5	barking	61:4
advise	27:8 31:17	appearing	62:22	barter	52:12
advised	18:4 27:4 29:19 31:22 36:13	apply	65:16	based	6:13
affirmed	16:24	appreciate	5:5	basically	12:11
aggression	10:10 21:16 23:11,15 23:20 47:6	approach	11:1	basis	38:18
aggressiveness	18:7,18	appropriate	53:2	Beach	1:1,22,22 3:5,17 82:4
		approve	75:12	behalf	1:9,11,13 3:2,8,14 4:7,15
				believe	17:7,23 18:11,13,24,25 19:2,4 20:6 25:25 28:22 55:21
				believed	28:18
				Ben	48:20,21 49:18
				beneficiary	74:25
				benefits	75:9
				Bernstein	1:4,4,7 1:7,7,8,8,9,11
					1:12 3:9,10,22 3:22 4:7,9,10,23 4:25 5:10,17,21 6:4,6,9,18,22,24 9:9,11,22 10:4,7 10:14,21 11:8,18 11:25 12:21 14:20 15:9,22,24 16:6,9,13,16,18 16:23 17:19 20:12 21:24 22:23 24:24 32:7 32:13,17 33:6,8 33:10,13,19,22 34:10,21 35:1,2 35:8,11,16,19,20 35:25 36:10,16 36:20 37:2,21 38:1,10,21,24 39:2,4,6,9,10,11 39:14,18,23,25 40:5,19,22 41:9 41:21,24 42:1,4 42:6,7,13,18,22 42:24 43:1,5,8 43:24 44:2,5,7 44:10,13,16,21 45:5,22,24 46:2 46:21,23 47:10 47:14,18,21,25 48:2,5,8,11,13 49:8,12,15,18,20 49:22,24 50:2,25 51:3,5,8,17,19 51:21,24 52:2,4 52:7,10,16,18,20 52:22 53:6,9,12 53:15 54:9,12,21 54:22 55:7,12,15 55:21,23 56:1,4 56:7,12,15,18,21 57:2,16,25 58:5 58:9,13,17,18,22 58:24 59:1,5,8 59:16,20,24 60:3 60:12,15,18,20 61:6,8,10,17,20 61:23 62:1,5,12 62:19,21,24 63:3 63:18,22,25 64:3 64:9,12 65:16,19 65:23 66:4,7,21 66:23 67:1,2,20 67:23,25 68:7,10 68:13,17 69:1,10 69:17,21,23 70:1 70:6,10,13,21,24

71:3,14,18 72:12 72:14,18,20,24 73:3,6,6,14,19 73:24 74:10,14 74:18,22 75:3,6 75:8,12,21,23 76:2,7,11,15,20 77:4,6,11 78:6 78:12,16,19,22 78:24 79:3,8,12 80:4,8,13,15,17 80:20 81:10 Bernstein's 34:14 74:20 better 53:17 64:6 76:21 77:24 79:15 beyond 6:12 28:2 bigger 8:20 bit 51:22 52:24 58:15 64:6 65:7 72:7 76:21 77:18 blah 9:15 30:16 bless 56:12 blog 20:11 blogs 46:16 boarding 7:24 Boca 3:11 50:11 53:25 54:5 bogus 51:15 bombarded 65:8 69:6 bones 26:21 bookkeeper 14:18 24:16 bottom 45:9 51:11 75:11 breaches 18:8 41:17 Brian 4:16 briefly 63:16 bring 9:15 40:14 64:25 68:24 76:1 76:9 bringing 68:21 73:20 75:9 broken 26:21 brother 47:4 73:8 brought 26:16 59:11 74:25 Brown 48:20,21 49:18 building 54:17 business 69:3 busy 29:4 button 9:1,2 bye 80:7	C	civil 7:8 11:11 14:7 15:13 41:21 41:23,24 61:3 claim 23:14 43:10 46:11 62:20 Claims 18:5 cleanse 72:6 clearly 47:15 clerk 7:11 8:23 36:10 65:1,3,8 clerk's 5:22 35:23 36:7 65:8 client 15:13 closer 54:13 cloud 77:25 clouds 78:3 CLR 2:1 82:15 cognizant 52:24 Colin 1:18 27:16 27:16 28:14 31:20 Colin's 30:15,17 31:11,24 come 14:1 16:19 29:10 57:23 76:6 80:5 comes 8:16 comment 9:19 communication 71:12 72:4 Company 17:20 compel 11:10 75:24 complaint 12:3,7 12:12 65:21 69:13 complete 9:13 82:11 completely 35:18 compliance 16:15 42:10 complied 30:15 33:18 43:8 comply 10:21 11:10 43:6 45:8 68:2 components 78:24 computer 8:19 22:19 32:25 concern 55:10 concluded 81:15 conducting 73:24 74:2 confused 42:18 confusing 30:18 connected 28:20 consent 51:13 consider 9:4 38:8 72:17	consideration 72:2 conspired 47:5 construction 63:13 consult 31:8 contact 24:9 30:22 contain 18:16 46:16 66:12 contained 23:13 76:21 contempt 4:13 11:9 13:23 15:5,13,20 27:22 42:20 70:20 71:24 72:16,19,25 79:1 contend 15:15 continue 6:11,13 25:10 29:22 55:25 58:20 continues 34:4 45:7 continuing 11:22 15:16 control 46:17 Convention 7:25 cooperated 25:22 copies 29:21 30:22 31:5,19 43:24 44:3,23 copy 22:17 32:11 33:9 43:20 correct 4:14 12:11 13:8,24 16:16 17:21 19:1,14,22 19:25 31:6 34:25 35:2 39:18 40:19 48:25 49:22 55:12 61:20 71:7 71:8,11 correspondences 6:20 counsel 4:5 31:12 34:5 37:12,13 41:15 42:5 43:18 74:23 75:10,13 counter 24:7 59:22 72:21,23 counterclaim 63:15 63:16,24 69:13 counterclaims 38:13 countercomplaint 17:18 41:5 59:20 61:14 65:17,21 65:25 countercomplaints 62:12 68:14 counterpetitions
---	----------	--	---

68:20	57:5,14,17,21	65:24 82:12	81:9
country 7:24	58:2,7,12,14,19	days 10:24 27:7	determined 11:23
counts 41:22	58:23,25 59:3,7	53:6,14	dialogue 66:18
county 1:1,22 67:9	59:9,10,18,22,25	deadline 31:17	die 7:16
82:4	60:5,13,16,19,21	deal 38:14 40:20	different 5:6 14:2
couple 27:7	61:7,9,11,18,21	51:23 79:16	21:8 33:16,21
court 1:1 4:3,11	61:24 62:3,8,15	dealing 23:11	34:15 35:19
4:13,17,19,24	63:23 64:2,5,11	42:11 49:2 50:15	38:12 41:23 61:1
5:4,12,22 6:5,7	64:13,24 65:18	deals 7:6 11:13	62:18 63:25
6:10,21,23,25	65:20 66:2,5,15	15:10	77:18
9:10,18,23 10:6	66:22,24 67:2,7	dealt 68:5	difficult 50:12
10:11,17,23 11:2	67:9,9,18,21,24	death 7:11	78:2
11:5,9 12:5,9,17	68:1,8,12,15,18	decide 30:11 53:21	dignified 60:7
12:19 13:7,9,14	69:4,11,12,19,22	deemed 69:15	direct 17:3 19:10
13:18,23 15:5,10	69:24 70:3,8,12	defame 23:6	directed 78:1,9
15:23,25 16:7,10	70:14,17,19,23	defendant 3:8 64:3	directing 9:21
16:14,17,19 17:2	71:1,4,9,15,19	69:18	11:16
17:6,13 19:4,9	72:13,16,19,23	defendants 1:14	direction 76:22
19:10 20:6 21:3	73:2,5,12,17,23	24:7 25:12 62:9	directly 56:9
21:9 22:2,4,6,11	74:1,12,16,20	defending 63:18	discharge 48:19
22:15,22 23:8	75:2,6,11,14,22	deferring 71:24	49:17
24:4 25:1 26:4	75:25 76:4,9,12	delete 28:24 29:24	discharged 49:21
26:18,25 27:8,14	76:17 77:3,5,7,9	30:9,14,16 31:19	discloses 18:11
27:21,24 28:2,6	77:12 78:7,14,18	31:22 43:16,21	discovery 13:16,17
28:9 29:7,10,21	78:20,23 79:1,4	45:13	discretion 5:24
29:22 32:1,5,10	79:10,14,24 80:5	Delray 1:22	discretionary
32:10,22,24 33:5	80:10,14,16,18	denied 8:5 9:19	40:10
33:9,11,16,21,23	80:21,25 81:2,8	deposed 56:6	dismiss 37:20 38:7
34:8,12 35:3,9	81:11	deposition 12:25	displays 18:7
35:14,17 36:1,5	Court's 18:13	13:6 16:2,8	disqualified 13:3
36:9,13,14,24	51:14	25:23 26:1,5,10	disqualify 13:5
37:4,9,20,22,25	courthouse 1:22	27:23 47:13,14	37:17
38:3,11,15,20,23	22:9 49:7 50:16	47:16 48:4 49:4	disruptive 14:21
38:25 39:4,8,12	courtroom 60:14	50:13,19,22,23	distance 50:12
39:15,19,24 40:4	61:2	51:4 52:1,25	distribution 44:24
40:6,20,25 41:8	cover 18:5	53:5 55:9,10,16	division 9:6
41:18,19,23,25	creditors 49:24	55:19,25 56:4	docket 36:3,6 37:8
42:3,6,8,15,19	crew 81:4	74:8,14 79:16	45:6
42:23,25 43:3,7	crimes 41:16,18,20	81:12,13	document 15:16
43:14,23 44:1,8	66:23	depositions 27:13	20:9,17 21:8,22
44:12,15,20,25	CRR 2:1 82:15	51:12	22:9 34:7 41:1
45:3,6,21,23	curator 49:19	designate 14:10,11	documents 13:11
46:1,18,22 47:7	73:16,21	designation 32:6,8	17:5 18:6 25:12
47:12,17,20,23	cut 75:4	32:14 33:2,6	46:6
48:1,3,7,9,16,21	cutting 5:1	34:1	doing 7:12 8:10
49:1,10,13,16,19		designed 36:23	38:8 48:3 64:5
49:21,23,25 50:3		66:24	64:16 69:17
50:14 51:1,4,7	D	desire 64:20	70:24 73:2 77:22
51:16,18,20,22	D 4:1	desk 8:19	dollars 62:7
51:25 52:3,5,8	D.B 1:9,10	destroy 29:24	Don 53:9
52:11,17,19,21	date 13:1 25:22	31:20 43:16,21	Donna 3:22
53:3,7,11,14,17	52:14 57:8,18,19	45:13	drafted 7:5
53:22,24 54:2,3	dated 1:4 20:21	destroying 31:14	drafting 7:9
54:4,7,10,15,19	82:12	detail 48:22	Drive 3:4,16
54:24 55:3,3,9	dates 57:7	detailed 23:12	Dtd 1:8,9,11,12
55:13,22,24 56:2	day 10:5 14:2 27:5	determine 65:2,12	duly 16:24
56:6,10,13,17,19	27:10 38:14	65:15 76:5,10	duty 18:8
	43:14 53:1,4		

E			
E 4:1,1 82:1,1	ends 30:24	exists 19:11	68:9 77:8 81:13
e-mail 11:14,18,23 12:15,17,19,20 12:21 14:5,9,12 14:13 15:12 18:12,17,22 19:3 19:3,6,10,16 20:1,7,17,21,22 21:4,5,10 23:13 23:23 24:2 28:11 28:12,16 29:11 29:14,15,20 31:22 32:8,15 33:1,12,17 34:2 34:17,20,22 35:4 40:24 42:12 43:15 46:3,4,4,5 46:24,25 58:16 61:11 62:1 71:4 71:7,11	engaged 21:15	expedite 53:7	finishing 67:24
e-mailed 32:16 34:7	enter 9:24 70:15	expenses 35:13	fired 22:1
e-mailing 62:10,23 63:2 80:23,25 81:2,4	entered 9:18,20,23 11:14,16 50:5 73:12,17,18 74:17	expensive 25:19 53:8	firm 14:17 15:1 24:1,14,16,21 32:21 34:6 62:25 80:24
e-mails 14:20 29:23 30:1 33:7 34:22	entirety 19:17,20	experienced 35:20	first 6:2 11:13 16:17,24 17:9,24 42:17 43:2,6,9 43:23,25 44:17 44:17 48:7 64:23 68:21
e-service 14:5	entitled 26:5	extra 22:17	FITZGERALD 3:3
earlier 12:2	equal 30:3	extreme 26:23	five 7:15
early 43:8 53:21	ERIC 1:7		Flagler 3:4,16
easy 14:3 17:10 71:20	ESQUIRE 3:3,15	F	flip 12:3
effect 45:16	essentially 11:8	F 82:1	Floor 3:16
either 15:18 36:7 40:10	estate 18:8 21:24 22:23 38:16,17 38:19 39:8,11 40:6,7 62:18 63:3 64:17,22 73:7,10,13,15,21 74:11,19,25 75:9 75:13 76:5,10	f/b/o 1:8,9,10,12	Florida 1:1,22 3:5 3:11,17 34:3 37:7 40:22 82:3 82:8
eliminate 60:21	et 4:20 22:24 23:6 36:16 75:4	face 26:21	focus 11:5 26:25 76:23,24 77:23
Eliot 1:8 3:9 4:10 4:19,22 11:8 14:20 15:6 16:18 16:23 17:19 18:6 21:10 23:6,12,13 23:15 30:18 31:11 32:2 33:6 35:19 42:9 47:15 70:5,19 71:5,10 72:8	eternally 19:11	Facebook 28:19,25 30:4,7	Foglietta 3:15 4:15,15
else's 7:13 20:20	evening 28:13	fact 28:23 33:24 43:8 46:10 59:16	folks 10:18 52:12 68:9 79:17
emergencies 8:6	events 60:13	facts 23:21	followed 46:25
emergency 5:8,11 5:11 7:3,14,22 8:9,22 9:11,19 10:15	everybody 8:8,24 28:24 30:20 33:15 34:14 43:14,20 44:21 45:12 51:14 66:8 66:19 78:9 80:19	family 7:8,21	following 28:13 34:13 64:23
employees 24:18 63:2	everyone's 7:2	far 61:16	follows 16:25
	evidence 5:17 6:8 27:20 43:22 45:1 72:9	fast 9:17	force 10:9 21:16 23:15 47:6
	evidentiary 11:19	favor 77:9	forced 41:6
	ex-parte 8:11	federal 59:6	forcefulness 18:7 18:17 23:11,20
	exactly 7:7 28:25 52:22 62:5,16 68:10	feel 51:10 79:15	foregoing 82:9
	EXAMINATION 17:3	fees 75:24,24	forgery 38:22 75:1
	examined 16:24	fiduciary 18:8	forget 28:8
	example 5:25 7:21 12:6 25:14 37:1 67:7	figure 78:4	forgot 74:4
	examples 12:1,1,4 12:22,23 67:18	file 5:22 9:11 17:22 22:9 31:18 64:20 68:19,23 73:11 74:24 75:22,23 79:10 80:1	form 38:18 54:24 61:14 67:10 80:3
	executing 33:25	filed 4:19 12:12 17:19 19:17 21:23 32:9 34:1 35:10 36:15 38:13 39:2,20,20 40:7 41:2,5 46:20 49:16 51:13 59:23,24 61:13 63:12 64:18 65:3,14,21 66:4 68:13,15 69:16 78:19,22 79:8 80:1,3,8,10	forms 67:8
	exhibit 6:11 17:12 17:14,18 20:13 20:16,19,21 21:19,23 22:5,8 22:20	files 7:21	forward 19:6 20:18 46:2,3,4,24,24 74:3 76:6
	exhibits 6:4,6,9 6:15 17:9	filing 5:16 35:23 59:20 72:25 73:15 78:12	four 11:3,7,12 12:22 29:25 30:3 62:18
	existence 13:12	filings 8:21	fourth 14:4
		final 11:20 72:8 76:25	FPR 2:1 82:15
		find 18:21 19:2 27:15 33:23 78:7	frame 33:4
		fine 9:8 56:4	fraud 38:22 41:17 41:21,24 75:1
		finish 42:16 54:15	frauds 41:13
			French 59:13 60:25

move 38:6 51:1 55:23,24 58:14 60:3,20 moved 37:17 MRACHECK 3:3	80:17,18,19 notwithstanding 16:2 number 29:4 56:23 63:3 66:9 numerous 12:16 20:23 21:11 23:19	ones 78:6,12 open 10:22 39:8 opening 12:9 32:5 operative 66:19 opinion 75:19 Oppenheimer 12:14 17:20 63:7 65:23 80:13,14 oppose 49:23 opposed 69:6 opposition 21:23 22:8,23 41:2 order 7:6 9:18,20 9:23,24,24 10:1 10:17,21 11:14 11:16,20,21 12:8 12:10,12,22 13:7 15:8,15,15 16:2 18:14 19:4,9 20:17 30:14,15 30:17 31:11,15 31:24 42:11 43:19,20 44:17 44:18 45:13 46:3 46:7,13,23,25 47:15 48:24 50:4 54:25 55:6,14,21 60:8 66:7 67:24 68:3 70:15 71:20 71:25 73:12,17 73:18 74:17,21 78:15 79:16,20 79:21,23 81:1,6 ordered 12:25 16:5 25:11 31:20 64:19 73:16 ordering 26:4 orders 11:9,10 ordinary 64:22 outline 11:4 outside 17:5 57:22 81:12,13	82:4 PAMELA 1:7 Pankowski 21:25 paper 14:21 17:22 23:25 24:17,20 papers 14:16 16:11 34:17 paragraph 15:14 17:25 18:2,4 19:8,15 23:5 paragraphs 60:9,23 parents 9:13 part 30:1 38:7 particular 65:14 parties 34:3 61:15 61:19 62:19 81:9 parts 18:25 party 34:23,24 35:7 37:15,22 38:4,17,19 39:1 40:16 61:7 62:9 77:19 passed 45:17 path 78:2 pay 6:1 9:22,25 36:11 41:11 67:11,22 75:13 75:24 76:3,5,10 payment 9:21 10:23 peeling 39:7 pending 26:6 31:7 45:11 49:2 50:17 55:10 56:19 62:8 63:8 68:19 people 12:13 14:10 14:18 20:23 21:11 24:6,13 25:4,9 28:12,16 28:22 29:4,4,6 29:11,16,19,24 29:25 30:3,3,5,9 30:10 31:4,13,17 33:20 35:21 46:8 46:15 63:11 percent 30:15 permission 40:11 person 14:16 15:1 16:5 24:1 29:20 36:14 50:20 62:25 personal 3:14 4:16 personally 37:10 39:16 perspective 80:2 petition 36:15 40:23 44:22 48:18 49:16
<hr/> N <hr/> N 4:1 nails 5:1 name 36:2,4 37:4,8 37:14 55:5 62:9 63:10,11 named 28:16 34:15 36:17 38:4 39:15 40:16 63:10 names 59:25 naming 61:14 narcotic 26:13 narcotics 53:16 narrow 11:7,12 12:24 nature 16:11 78:4 near 54:6 necessarily 7:22 77:15 need 6:16 7:2 9:7 15:17 26:18 32:8 34:8 38:6 56:7 57:16 60:19,21 67:4,17,21 72:9 75:10 76:19,20 76:21,23 77:14 78:11 80:6 81:8 81:12 needed 6:16 needs 5:15 66:8 never 8:2 27:14 new 8:19 10:7 68:19 night 29:9,13 nine 5:1 No. 502014CP003... 1:2 non-jury 77:7 Non-verbal 79:7 nonsense 41:7 North 3:16 Northwest 3:10 note 45:10 notes 82:11 notice 67:6 79:5 noticed 54:4 74:12 74:13,15 notices 81:3 notified 27:14 40:2 42:4 43:14 notify 43:20 44:21	<hr/> O <hr/> O 4:1 O'Connell 3:15 4:16 74:4 oath 23:7 object 35:25 objected 13:16 objecting 31:14 objection 55:15,17 55:18 objections 13:16 13:19 obvious 75:10 obviously 46:13 75:9 office 14:19 25:9 35:23 36:7 54:3 55:3,4 61:15 65:8 offices 24:21 25:8 Oh 5:21 44:2 46:2 60:3,18 62:5 68:17 70:10 okay 4:17,24 5:4 5:16,21 6:21,22 7:4 10:14 15:22 15:25 19:21 21:10 22:6,22 27:24 29:1 31:2 32:1 33:5 38:15 42:8 43:2,5,24 44:2 45:5,20 46:22 47:8,14,18 47:25 48:8,21,23 50:2 51:5,21,24 52:3 53:6 55:2,8 55:16,23 56:1 57:17 58:5,13,17 58:20 60:18 61:6 61:21 64:12,23 65:10 66:16 67:1 67:25 68:3,7,17 69:23 70:10,13 70:18 71:3 72:5 72:7 77:2,12 78:9 80:7 81:10 81:11 Once 9:24	<hr/> P <hr/> P 4:1 P.A 3:4 package 12:2 21:7 packet 12:5 page 20:25 21:4,13 23:2 43:25 67:19 67:21 pages 5:16 6:2 8:22,22 14:25 67:3 paid 10:18 36:10 36:11 67:13 Palm 1:1,22 3:5,17	

66:12	pretty 10:1 54:23	publicly 19:11	reason 6:14,15 8:4
petitioner 36:15	print 5:25	publish 15:16	53:13
65:13	prior 11:9,10 26:5	18:23 46:5 71:12	reasons 4:20 13:2
Petitioner's 17:14	privilege 14:9	71:14	50:24
17:18 20:13	18:5 43:19	published 18:20	recall 26:4 29:2,8
21:19	privileged 11:13	20:8	receipts 26:17,18
petitioners 40:17	11:18,23,24	Publishing 71:15	receive 33:7
petitions 26:6,7	18:22 19:3,16	Publix 26:16	received 11:18
39:25 68:20	20:1 21:1,13	pull 78:3	15:12 28:13
phone 3:6,11,17	28:12 42:12	purported 12:10	receptionist 25:7
50:9	43:10 46:11 72:4	64:25 76:1	25:15
phonetic 21:25	73:8 79:22	purposes 8:20 14:1	recharge 47:2
53:10	pro 3:9,10 4:5,10	pursuant 16:11	recipient 36:15
physically 36:24	35:21,22 77:1,1	push 9:2	recognize 13:12
pick 53:22,24 54:2	77:13	put 6:4,6,7,8,19	16:4
piece 23:25 24:17	probably 12:8	8:15 19:18 45:10	recognized 37:7,18
24:20	22:18 49:12 54:9	46:21 59:12,22	reconsider 72:17
place 23:24 35:10	probate 7:4,7,17	59:25 67:14	record 10:20 32:10
53:23 54:5 60:14	7:19 64:14	70:21 71:11	37:12 55:17
81:13	problem 5:13 50:7	72:22 78:17 80:2	82:11
places 23:19 28:20	53:3 57:6,23	puts 71:6	reference 12:16
plain 66:13	67:25 71:4	putting 46:18	19:16 71:6
Plaintiff 1:5 3:2	problems 51:6	53:15 59:23	referenced 23:20
plane 7:24	procedure 6:17		referencing 19:19
play 77:21	11:11 14:8 37:6	Q	referred 48:24
plead 66:11 67:18	40:8 53:8	question 18:15	71:16
pleading 5:8 6:1	procedures 26:12	22:2 24:4,24	reflect 21:15
9:12 34:23 36:5	52:25	28:3,7 34:17	refused 10:21,22
36:9 38:8 39:2	Proceed 16:20	35:4 39:1 48:6	24:9 25:18 35:16
39:19,24 40:13	proceeding 27:22	50:2 67:23 70:19	refuses 13:1,5
40:14 41:2 59:11	38:16,17,19	73:3 74:23	24:12 32:17
60:24 61:3 64:25	64:21 65:4,13	questions 44:9	refusing 41:2
65:1 66:11,16,25	76:24 77:7	56:9 72:22	46:13
67:4,6,6	proceedings 40:9	quickly 27:19	registered 40:25
pleadings 58:20	68:21 82:10	quiet 42:6	82:7
59:15 71:7,16	process 25:15	quit 37:16	regret 29:21
76:19,20 78:13	32:20 34:14 35:4	quite 28:23 43:13	relief 7:23 8:9
80:3,22	35:6 37:23 38:2	46:14	66:13
please 62:13	41:4 62:4 65:3	R	rely 64:7
point 26:3 33:24	produce 13:11	R 4:1 82:1	remember 66:8
36:22 40:15 53:1	production 13:10	raise 35:18	75:19
pointed 46:15	13:15,18 14:2	rarely 8:9	removal 27:17
possibilities 6:12	74:19	Raton 3:11 53:25	remove 26:7 30:7
possible 60:7	professionally	reach 57:4	56:21 72:5 80:1
71:21	37:3,10 39:17	read 10:22 30:13	removed 13:3,3
possibly 18:23	prohibited 80:23	43:11,11 45:17	removing 56:18
59:17	prohibition 15:11	47:7 66:10 71:17	repeatedly 24:8
post 30:4	proof 45:2,7	reading 45:22	repeating 47:9
posted 28:18,24	proper 61:3 70:9	70:11	66:17 69:24
30:8 45:15	73:2 81:9	real 53:7	report 20:12 82:9
postponed 54:16	properly 24:11	really 7:5,17,19	Reported 1:25
pot 78:1	Protective 55:21	50:4 56:23 63:10	reporter 2:1 46:12
PR 73:21 74:4	prove 15:21 67:5	64:14 76:23	53:25 54:4 55:5
prefer 50:11	67:17	77:17	82:7
prepare 64:25	provided 29:23	realm 6:12	reporter's 54:3
prepared 60:8	30:1	Realtime 2:1 82:7	55:3
PRESENT 3:21	publication 30:6		reporters 46:12

represent 76:2,4	71:18 72:7 73:14	71:23,24 72:9	25:16 63:11
representative 3:14 4:16	73:23 74:8 77:3	74:18 76:13 77:9	section 30:23
represented 34:5	79:14,15 80:7	79:19	Security 8:1
representing 24:11 25:14 34:24 63:20	RMR 2:1 82:15	rulings 11:11	see 4:19 5:19 8:2 13:18 17:20 19:13 21:9,17 26:15,18,20 32:8 32:11 33:12 37:4 37:4,9 39:15 40:13 42:3 43:22 44:14 45:9 65:11 66:3,3,5 68:18 68:24 70:4,8 71:6,10
republish 19:9 20:20 46:5,15 79:21	road 58:8	run 35:12	seek 31:12
republished 12:12 12:15,20	room 49:7	running 57:11	seen 44:3
republishing 15:11 46:14	Rose 3:3,3 4:6,7 4:12,18 5:19 9:14 10:20 11:3 12:6,11,18,20 13:8,10,15,22,25 15:12 16:18 17:4 17:11,16 20:15 21:5,11,12,21 22:5,7,12,17,20 23:1,9,10 24:8 24:15,24 25:6 27:2 28:5,8,10 31:25 32:4,7,9 32:14,23 33:3,7 33:11,12,24 34:19,23 35:15 35:18 36:2,6,17 36:21 37:6,10,11 37:24 38:12,16 39:3,10,16,21 40:3,15 43:23 44:3,6 45:7 47:3 47:21,24 48:12 48:14,20,25 49:5 50:11 51:12 53:20,24 54:4,17 55:1,2,4,8 56:22 57:3,9,11,20 61:23 62:16,22 63:21,24 65:24 69:9,12 70:15,18 71:8 72:11 73:11 73:20 74:2 79:7 79:19 80:23 81:1 81:4,6	<hr/> S <hr/>	self 33:24
request 13:15,18 69:12	Rose's 10:9 61:15	S 4:1,7	send 15:13 20:22 29:16 32:20 43:20
requests 24:10	Ross 37:9	sake 7:2	sending 14:25 29:4 29:6,11
rescheduled 5:15	rule 7:14,15 14:6 14:7 33:24,25 55:17,18 64:7,13 65:4,5,6 66:6,8 66:10 67:22 71:22 76:11,12	sat 16:7	sensible 76:22
reserved 56:22 69:14	ruled 13:20	Saturday 14:24	sent 18:12 23:13 28:11,15 29:3,3 29:17,20,23 30:1 33:1 43:15 73:8 79:2
resolved 10:3	rules 14:5,6,6,7 14:22 15:2,6 16:15 31:9,23 33:17 40:8 43:11 43:15 60:10 61:3 64:14 65:12	save 62:6	sentence 19:15 77:8
respect 61:10	ruling 43:19 68:9	saves 76:15	separate 79:25
respond 28:6 78:13		saw 6:2 48:16 59:10	separately 57:20
respondent 36:3,4 36:12,14,17,19 36:25 37:9,11,14 37:19,21 39:16 40:1,4 41:1 65:14		saying 13:20 16:14 34:19,25 53:12 62:13 63:16 69:19,25,25 70:12,15	September 1:21 20:22 21:6,9 27:4,9 47:22 49:3 82:12
respondents 24:6 25:12 33:19 34:10 36:11 58:19 62:10		says 8:1 15:14,14 16:4 19:19 24:18 30:18 33:25 34:21 37:15 43:5 43:16 46:3,13,23 50:5,5 66:11 74:20	serious 41:16 51:6
responding 70:7		scan 5:23	serve 14:9,11,14 23:25 24:12,16 24:20 25:2,7,21 32:8,19 34:1,3,4 34:6,14 41:19 55:6 61:18
response 34:21 78:19,21 79:7 80:9		scared 29:5	served 14:10,15,23 24:22,22 25:2,9 25:15 26:2 32:19 35:3,5 37:23 38:1,10 40:5,23 41:4,9,14,21 61:21,23,24 63:9 63:9 64:4 65:7 65:17,25 69:15 69:15,21
return 31:19		schedule 4:20 9:14 26:9 27:3,12,18 51:9 53:18 57:12 57:20,23 58:3 74:8	serves 36:9
revealed 21:1,14		scheduled 26:8 47:19 51:12 58:4	service 14:9 25:5 33:14,16 35:6 40:25 41:11 62:4
review 68:22 69:8		scheduling 8:15,18 8:20 25:22 51:7 57:12	
revisit 74:21		school 9:13,16 10:5,5,6 54:14	
RICO 59:6		schooling 10:1	
rid 68:9		schools 10:8	
right 4:3,11 5:4 6:23 7:14 9:1 10:16 13:25 21:9 24:23 25:25 26:25 32:18 34:5 34:13 39:12 41:24 42:10,23 43:12 44:12,19 44:19 48:1 49:1 49:5 50:19 52:20 52:22 53:1,22 57:10,14 60:5 62:3,17 63:20 64:1,2 69:4,4		scope 28:2 55:14 56:15	
		se 3:9,10 4:10 35:21,22 77:1	
		seat 72:10	
		second 12:4,6 14:19 20:25 21:4 42:16 45:24 64:11 78:16	
		secondaries 32:16	
		secondary 14:12	
		secretaries 63:1	
		secretary 14:18	

62:13 63:19	SOB 67:15	Street 3:10	takes 56:13
76:22	social 28:18 45:16	stretch 71:21	talk 43:17 58:3
servicing 16:11,14	socially 28:20	strike 38:7 60:9	talking 33:11
24:3,5,13 25:4	sold 27:23	72:3 80:1	34:13 36:18
25:12 37:13 62:8	somebody 18:19,25	striking 60:22	38:12 54:7,10
68:14	19:2 20:20 24:23	61:5	62:3,4 63:25
ses 4:5 77:1,13	32:19 37:12	stuff 42:24 43:3	69:1 74:23
set 9:6 11:15 45:7	sooner 8:13 9:5,6	61:5 67:16 70:11	technically 71:10
50:20 55:11 56:3	sorry 10:15 12:18	77:25 78:8 80:19	Ted 1:4 3:22 4:7
56:25 64:24	21:7 23:9 27:1,1	style 5:8 71:20	12:21 13:3 18:12
sever 63:14	28:4 32:23 39:7	77:22	20:12 21:15 26:7
shape 38:18	42:7 60:4	styled 65:11	27:17 56:18,21
shattered 26:22	sort 11:4	sua 60:8	73:6
sheet 36:3,6 37:8	sought 66:13	sub 59:13	Ted's 21:2,14
Sherry 58:11	South 3:4	subject 34:16	29:14 57:9 74:20
Shirley 1:4 21:24	speak 47:3,4	submitted 44:25	teeth 26:21,22
22:23 39:10	speaking 4:25	45:6	telephone 50:13
62:19,24 74:15	special 40:12	substance 18:12,16	telephonically
Shirley's 74:19	specific 7:6 64:14	successor 4:7	49:9
short 11:4,6,7	spikes 5:1	sue 70:6	tell 25:3 28:11
66:12,13,14,21	spoke 75:16	sued 39:21 63:6,7	30:10 36:24
66:22,22,24 67:3	sponte 60:8	65:24 70:6	45:21 46:8 47:2
show 37:1 42:19	stacks 14:21,21	suing 24:14,19	57:14 75:7 77:1
43:23	stand 21:14 42:17	25:9 63:1 78:6	77:1
shuts 8:24	44:8 47:5 72:22	suit 70:8	telling 20:5 29:15
sic 31:18	start 35:4 42:22	Suite 3:5	29:23
side 8:11 17:25	53:21 54:14 55:1	summary 11:4	tend 35:7
23:3 57:9 69:25	61:4 65:3	Sunday 14:24,24	Tescher 53:9
70:1,21 72:14,17	started 29:12	support 2:2 75:5	testified 16:25
77:16	State 82:3,8	supposed 5:20 25:4	testifying 29:2
sides 69:25 70:16	State's 51:14	31:5 69:6	45:4
sign 10:22	stated 23:12	supposedly 40:14	testimony 20:5,10
significant 60:10	statement 27:23	Supreme 67:7,9,18	42:16
similarly 45:15	31:1 32:5 52:16	sure 5:6 9:10 10:1	Thank 43:1
Simon 1:7,7,8,8,9	66:13,14,14	28:9,25 31:4,8	theirs 78:19
1:10,12 39:11,12	states 47:15	32:9 48:18 52:2	Theodore 23:7,13
63:3 73:7,10	stay 32:2 69:13,16	59:11 61:12	23:14
74:17	69:19	62:12 68:10,25	thing 5:5 13:10
Simon's 73:13	stayed 70:2 80:11	69:3 76:12	14:4 15:25 27:15
74:10	80:20,21	switched 21:8	27:21 37:18 43:6
simple 15:4 50:4	staying 70:15	sworn 16:24	44:1,19 45:24
67:8	80:16	system 8:23 69:5	51:8 55:20 56:2
single 14:16,16	stenographic 82:11		60:6 77:18 79:22
15:1 23:25 24:1	stenographically	T	79:24
25:7 29:20	1:25 82:9	T 82:1,1	things 9:6 11:17
sir 4:18 12:6 15:9	step 37:16 77:13	tab 11:15,15 17:24	13:4 15:17 21:6
18:1 20:5 35:2	stop 7:11 8:1 15:5	21:1 23:2,3	22:12 27:19
36:20 39:14 43:1	38:11,11 47:7	table 14:15	28:24 38:13
48:2 58:18 61:17	55:16 63:23	tabs 21:7	41:15 45:15
61:20	64:11,11,11	tacked 40:12	59:19 61:1,11
sit 16:1 50:22,23	stopped 29:6	take 5:14,23 15:6	62:10,18 63:6
51:25 52:9 57:22	story 73:10	16:5 17:8 25:25	64:18 68:18
sites 19:11	straightforward	26:5 43:3 48:4	73:20 74:18
Slow 22:4 23:8	15:4	48:15 49:4,5	77:23 80:8
38:23 40:6 48:1	strategy 10:9	50:13,19 52:24	think 7:1 9:1,2,8
75:2	21:15 23:12,15	53:14,20 60:14	11:5 15:4 23:24
smear 23:5	47:5	68:4 71:25	30:8 33:3,3,4

34:16 36:21 38:6 43:17 49:24 54:19 60:8,22 66:19 70:9 71:20 72:24,25 74:4 79:19 third 21:22 22:12 58:15 THOMAS 3:3 thought 6:16 9:18 31:12 44:19 70:10 thousand 62:7 thousands 28:22 30:5 threaten 18:17 threatens 18:6 three 12:1,22,24 15:3 17:5,8 21:6 22:12 27:8 56:22 78:24 81:7 throw 77:25 thrown 10:4 Thursday 28:13 48:15,16,17 ties 59:5 till 51:11 58:10 time 5:6,23 11:21 15:7 28:12 29:5 29:7,10 33:4 43:10 45:20 51:14 52:13 53:23 56:24,25 57:1,3,16 59:2 65:19 69:1,2,7 70:7 79:13 80:6 times 6:19 25:21 26:9 57:13 tiny 30:23 titanium 5:1 today 10:25 11:1,6 14:1 15:4 17:6 26:16 50:15 78:25 told 6:18 19:1 26:11,19 27:21 30:4,13,16,25 31:4,7,12 36:11 43:9,10 45:12 58:1,5,9 tons 55:13 topic 6:25 7:7 torts 42:2 trained 78:10 transcript 82:10 transferred 27:25 treatments 58:1	tree 61:4 tremendous 26:12 trial 67:17 Tricky 33:22 tried 26:9 tries 60:24 trouble 8:14 34:9 43:13 true 61:16 62:16 67:16 77:3,10,11 82:10 trust 1:4,8,9,11 1:12 63:12 64:17 64:22 trustee 1:4,8,9,10 1:12 4:8 23:7 try 27:3 29:22 45:7 trying 9:16 10:8 25:19 27:12,18 60:6 61:18 62:6 turn 17:24 20:25 31:3 turned 9:16 twice 9:24 14:25 two 10:24 14:12 15:17 22:15 30:24 38:12,13 44:16 53:6,14 63:3,6 64:18 65:23 79:14	<hr/> V <hr/> validity 13:12 variety 18:8 verbatim 12:15 verification 6:17 versus 17:19 65:13 view 13:2 violate 72:3 violated 15:15 79:20 violates 14:22 15:1 18:13 60:10 61:3 violating 11:9 violation 12:10,21 70:20 71:24 vs 1:6 <hr/> W <hr/> wait 21:3,3 51:17 51:17,17 52:20 63:18 76:7 80:8 80:8 waive 25:17,18 35:11,16 41:11 62:6,13 waiver 62:13 waives 41:10 walking 55:20 want 7:1 8:7,12,12 9:10 14:11 15:23 15:25 17:11,13 32:1,22 42:8,16 43:12 44:13 45:20,21 47:2,3 48:4 49:4 50:21 51:5,18 52:5 53:4 54:2,15,16 55:5,15,18 56:3 57:7,17,18 58:4 60:25 61:12 62:9 63:14 64:18 65:6 65:7 66:3,3,5 67:13 68:18 70:1 70:4 71:9 72:17 72:21,22 75:6 76:17 77:3,8 80:18 wanted 27:9,16 45:25 47:11 wants 38:25 49:21 56:10 74:7 wasn't 10:19 18:15 73:9 waste 69:7 wasted 51:13 53:10 wasting 69:1	way 15:6 28:2 36:13 38:17 40:22 41:4 50:3 50:14 53:13 55:14 58:7 61:9 67:2 68:20 69:5 71:21 72:7 73:2 77:22 we'll 10:15 20:16 27:21 31:2 58:12 we're 4:4,11 6:25 7:9 10:25 11:1,6 15:3 17:9 38:12 38:14 48:3 50:11 50:15 54:23 60:5 60:5,6,11,13 63:4 64:5,16 68:1 72:6 we've 10:8 58:14 70:4 79:17 web 19:12 46:9 website 18:19,21 19:18,24 20:2 Wednesday 53:19 week 26:9 27:3 47:19 51:11 WEISS 3:4 went 5:25 43:9 47:4 West 3:5,17 wide 18:7 wife 29:6 54:9 66:9 win 77:2,3,3,8,14 77:15,21,24 winning 77:15 78:1 wishes 9:14 withdraw 14:1 witness 16:17 17:1 21:4 22:3,14,16 22:18 24:5,25 25:2 26:14,20 27:1,25 28:4 60:1 witnesses 32:3 42:13,15,21 59:16 60:1,11,13 61:1 word 8:15 36:4 66:17,19 72:8 76:25 wording 41:25 work 10:12 50:4,7 58:12 81:12 works 28:25 50:14 55:14 world 5:3 14:12
--	--	--	--

45:18
worldwide 19:12
 46:9
wouldn't 5:2 26:23
 41:11
write 18:2,9 21:1
 21:13 23:17
 67:11,12 78:14
 79:16
writing 66:6
wrong 41:19 45:9
 51:10 61:4 76:13
wrongs 79:14
wrote 23:14

X

Y

yeah 6:7,10 19:21
 19:23 23:18,24
 24:18,19 25:2,19
 27:1 39:23 49:20
 59:18 72:18 77:6
 78:22 79:3 80:18
 80:25,25
year 22:10
years 35:22
Yep 23:22

Z

0

1

1 17:12,14,18 59:3
 68:6
1.080 14:7
10 24:10
10:00 29:9,12,13
 55:1
10:30 54:13
10:45 79:18
100 8:22 25:21
 30:15 42:1 67:3
10th 58:6,9
11:00 54:13
11:14 1:23
11:15 79:17
15 1:21 8:1 24:10
 35:22
15TH 1:1
16th 82:12
18 15:8
18th 11:16 12:10
 42:11 49:5,11
 70:20 71:25
19th 13:7 16:2

48:24 50:5

2

2 20:13,16,19,21
 21:13 41:11 68:5
2,000 28:12 30:3
2.516 14:6
20 1:4 35:22
2008 1:4
2012CP004391 4:4
2012CP4391 39:13
2014 1:21 15:8
 42:11 82:12
20th 3:16
22nd 55:1
235 17:25
236 19:8,15
23rd 29:2
24th 27:4,9 47:22
 49:3 50:21,22
 52:1,6 55:11
 56:20 57:18
2753 3:10
28th 22:10

3

3 21:19,23 22:8,20
 41:11 68:5
30 26:9
331 5:16 6:2
33401 3:5,17
33434 3:11
33444 1:22
34th 3:10

4

4 23:2
4,000 28:19
4th 20:22 21:6,9

5

5 23:5
5,000 12:13 59:4
5.020 66:9
5.025 65:5
50,000 63:2
505 3:4
515 3:16
53 60:23
538 14:25
54 60:23
561.245.8588 3:11
561.655.2250 3:6
561.832.5900 3:17
5s 64:13

6

600 3:5

7

8

9

9 15:14
9/13/12 1:8,9,11
 1:12
9:00 53:24 54:13
 54:14
9:57 1:23
90 8:22
92 12:13
9A 71:5