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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.

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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:  
3    ALAN B. ROSE, ESQUIRE  
4    MRACHEK, FITZGERALD, ROSE, KONOPKA, THOMAS &  
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10   On behalf of the Defendant:

11   ELIOT BERNSTEIN, PRO SE  
12   CANDICE BERNSTEIN, PRO SE  
13   2753 Northwest 34th Street  
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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  
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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

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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

16

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 --

25

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**

26

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.

27

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

28

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

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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 --

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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

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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

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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

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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 countercomplaint 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.

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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.

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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.

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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

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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?

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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

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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 --

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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.

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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

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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 --

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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

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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

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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,

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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.

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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.

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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

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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

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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 --

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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

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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

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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 --

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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

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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

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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



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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

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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.

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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.

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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

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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.

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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 --

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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

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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

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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 --

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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

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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

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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

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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

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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.

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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

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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  
 15 (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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