

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
(SOUTHERN DIVISION - SANTA ANA)

JOHN C. EASTMAN,)	CASE NO: 8:22-CV-00099-DOC-DFM
)	
Plaintiff,)	CIVIL
)	
vs.)	Santa Ana, California
)	
BENNIE G. THOMPSON, ET AL.,)	Monday, February 14, 2022
)	(1:11 p.m. to 1:41 p.m.)
Defendants.)	(1:51 p.m. to 1:58 p.m.)

SCHEDULING CONFERENCE (VIA ZOOM)

BEFORE THE HONORABLE DAVID O. CARTER,
UNITED STATES DISTRICT JUDGE

APPEARANCES: SEE PAGE 2

Court Reporter: Recorded; CourtSmart

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Transcribed by: Exceptional Reporting Services, Inc.
P.O. Box 8365
Corpus Christi, TX 78468
361 949-2988

Proceedings recorded by electronic sound recording;
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Also present:

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1 Santa Ana, California; Monday, February 14, 2022; 1:11 p.m.

2 (Remote appearances)

3 (Call to Order)

4 **THE COURT:** And, Counsel, we're -- first of all, good
5 morning -- or good afternoon. We're on the record in the
6 matter of *John Eastman versus Bennie Thompson*, 22-00099.

7 And I can see you. Can you see and hear me? And I'm
8 just kind of waving my hand in the air.

9 Mr. Burnham, can you? Okay.

10 Mr. Plevin, can you?

11 Mr. Letter?

12 Mr. Eastman -- or Dr. Eastman? Excellent.

13 Then the Court noticed that over the past two weeks,
14 there's been a review and production moving forward in which
15 Dr. Eastman has reviewed, according to my records,
16 approximately 46,000 pages spanning November 1st through the
17 13th of 2020 and January 4th through the 7th of 2021, of which
18 those 46,000 pages contained -- and I believe about 24,000 --
19 let me get my notes for just a moment in the back to be
20 precise. No, I'm -- give me one moment, Counsel. I've made
21 some notes.

22 Well, it contained just over 26,000 pages of those
23 46,000 pages which were excluded as irrelevant mass mailings or
24 family communications. And Dr. Eastman has thus far produced
25 over 8,000 pages to the Select Committee. The Court today is

1 primarily interested in hearing from each of the parties on any
2 hurdles they're facing. And, further, the request for
3 expedited briefing for the January 4th through 7th, 2021
4 documents.

5 Mr. Letter, let me begin with you. Are you facing
6 any specific issues you'd like the Court or Dr. Eastman to
7 address? And I'd like to hear from you.

8 **MR. LETTER:** Your Honor, I'm sorry. I didn't hear if
9 you said Mr. Plevin or Mr. Letter. I apologize.

10 **THE COURT:** Mr. Letter.

11 **MR. LETTER:** Oh, thank you. Okay. Good afternoon,
12 Your Honor. Yes, Your Honor. We're facing major hurdles which
13 is that, in essence, the way this is working is that Professor
14 Eastman has basically a fairly lengthy injunction here because
15 we're getting very little solid information. A lot of things
16 that we're seeing are privileged claims that are not very well
17 described at all and we are just extremely concerned because we
18 roughly calculate that this will take about another six weeks
19 to complete and even then, we will be left with something that
20 doesn't provide us with much of the information that we very
21 urgently need.

22 We also have some significant concerns because there
23 are claims of attorney-client work product privilege but we're
24 not being told who the client is, in what capacity. So if it's
25 Trump, does that mean personal, presidential campaign. We're

1 not being -- we've asked for -- are there retainer agreements?
2 Are there common-interest agreements? Mr. Burnham has said,
3 well, those were not covered by the subpoena but that doesn't
4 make any sense. The subpoena was to Chapman.

5 The burden here is on Professor Eastman. If he's
6 going to claim attorney-client or work product, he has a burden
7 to demonstrate that the material was, indeed, covered by those
8 privileges and that's not happening if you don't even know if
9 there are any retainer agreements. There can be attorney-
10 client relationships. It's not favored but there can be, that
11 are oral but there's an enormous amount of material here.

12 We have suspicions about some of this because some of
13 the dates when privileges are being claimed. We have other
14 information that Professor Eastman was not part of the legal
15 team for that period. So it's not who -- again, was he
16 representing Mr. Trump, President Trump, Candidate Trump? What
17 is the retainer agreement? What does it say?

18 And the main thing is there's a whole burden here
19 that is on Professor Eastman to demonstrate that he's entitled
20 to claim these privileges and as we pointed out, there are very
21 serious issues with that because of his use of the Chapman
22 University system that we think means that either -- nothing
23 was protected or very little. And that -- I think it's a
24 straight legal issue.

25 In addition, as you know, we have arguments that

1 because of Professor Eastman's prolific statements that were
2 made on social media and in the public that there are all sorts
3 of waiver issues that would probably require in-camera review
4 by Your Honor. But there seem to be whole subjects that are
5 not covered.

6 And then in addition, there's the whole issue of
7 House recognition. The House recognizes constitutional
8 privileges. Other than that, for common-law privileges like
9 work product and attorney-client, the House often will honor
10 those but that's up to the House and the House, on some
11 occasions, doesn't. And so that's an issue that is within the
12 hands of the House.

13 So this process is playing out in a way that it began
14 with, in essence, giving Professor Eastman a fairly lengthy
15 injunction that's going to continue for quite a while. And
16 we're -- the Committee is moving, as I've said before, at
17 breakneck speed. We're getting cooperation from many, many
18 people. We're finding out lots and lots of information.

19 And Professor Eastman appears to be a central player
20 in the development of a legal strategy to justify a coup which
21 is obviously extremely troubling and some of this, therefore,
22 goes to the very heart of what the Committee is looking into
23 and we're not getting that on the basis of privilege claims
24 that have in no way been properly supported or demonstrated.

25 So that's why, Your Honor, we urge that the Court now

1 set an expedited briefing schedule and allow us to make our
2 arguments to you. As I say, some of them, I think, are legal
3 arguments. Others may require some in-camera review by Your
4 Honor but -- and the process can continue but right now, the
5 process is not, we think, either in our interest or what the
6 law requires.

7 **THE COURT:** Dr. Eastman, the same question. Would
8 you like -- any specific issues facing you or the Select
9 Committee to address? And, Mr. Burnham, if you want to respond
10 to that or Dr. Eastman, please.

11 **MR. BURNHAM:** I'll go ahead and respond. Thank you,
12 Your Honor. Your Honor, essentially what the Congressional
13 Defendant's position is, is that Your Honor's January 26th
14 order that they agreed to at the time now isn't sufficient.
15 The January 26th order was placing extremely significant
16 demands on Dr. Eastman requiring a lot of work and we've
17 undertaken extraordinary efforts to comply with it, as we have
18 done day in and day out at the time that it was entered.

19 And I think Your Honor's initial schedule made a lot
20 of sense where around the time where we finished the briefing
21 -- I mean, finished the production, then a briefing schedule
22 would be set and then we would brief up the claims for Your
23 Honor. And I think that made sense.

24 And now what the Congressional Defendants are
25 basically requesting is to litigate the various privilege

1 issues bit by bit week to week which we think is a tremendously
2 inefficient way to go about it and conflicts with the law of
3 the case and embodied in Your Honor's January 26th order.

4 I also think that the proposed briefing schedule is
5 completely backwards. As Mr. Letter said several times just
6 today, the burden is on Plaintiff to demonstrate the privilege.
7 And so any briefing schedule should start with an initial brief
8 by the Plaintiff to which the Congressional Defendants can
9 respond and then we'll have an opportunity to reply as the
10 holder of the burden. And that's what we'd ask the Court to do
11 when the time comes for -- where briefing is ripe.

12 I'm not going to respond point by point to whether
13 there was a coup or the various arguments the Congressional
14 Defendants have made about work product, about the client.
15 We're prepared to respond to that at the appropriate time and
16 we're confident that Your Honor will find our privilege claims
17 to be solid. Thank you.

18 **THE COURT:** Concerning the privilege log details,
19 under Federal Rule of Civil Procedure 26, the party claiming
20 privilege must describe documents "in a manner that, without
21 revealing information itself privileged or protected, will
22 enable other parties to assess the claim."

23 A party does not satisfy its burden by offering
24 assertions of privilege that are functionally silent. For
25 example, offering little information about the basis for the

1 invocation of that privilege and doing so would wrongly
2 encourage strategic manipulation of the discovery process by
3 means of blanket assertions of privilege.

4 The parties represented to the Court that they were
5 meeting and conferring about the level of specificity required
6 in Dr. Eastman's privilege logs. Now, previously, the Select
7 Committee argued to the Court that, "Plaintiff has not provided
8 sufficient information to determine the validity of Plaintiff's
9 privilege assertions." That was noticed in the objections on
10 Document 94 on February 10th.

11 So, for example, in Plaintiff's production on
12 February 1st, Plaintiff asserted privilege over Bates Numbers
13 Chapman 004539 and Chapman 004707 with only the notation,
14 "Comm" -- which the Court assumes stands for "Committee" but
15 C-o-m -- C-o-m-m -- "with Co-counsel" as the description.

16 Now, Plaintiff also asserted privilege over Chapman
17 004713 through 4719 with "Memo Re: Legal Theories" as the
18 description. And similarly, Plaintiff only described Chapman
19 004556 through 004592 and Chapman 004594 through 004630 as
20 "Attachment."

21 When you're filing on Friday, February 11th on behalf
22 of the Select Committee and asking for expedited briefing, have
23 you been able to resolve your concerns about these privilege
24 logs details, Mr. Letter? And I think from your argument
25 today, I can speculate that you have not but I want to ask

1 because there have been conversations apparently between you
2 and Dr. Eastman and Counsel Burnham concerning these matters.
3 So have you resolved your concerns?

4 **MR. LETTER:** No, we have not, Your Honor. We're not
5 even close to it because you have given examples of the kinds
6 of things we're facing. For instance, sometimes all we have is
7 a correspondence email address which is provided with no name.
8 As you said, there are things like, "Comm to client and
9 counsel," what legislature correspondence impacting possible
10 litigation.

11 I repeat. We don't know who the client is in a lot
12 of instances. Client -- again, because Mr. Trump could have
13 been Mr. Trump, President Trump, Candidate Trump, et cetera.
14 We don't know whether they're -- one of the biggest things is
15 we don't know whether there was any attorney-client
16 relationship at all.

17 So I don't want to repeat myself but unless there's
18 something showing that there was even an attorney-client
19 relationship and when -- when did it start, when did it end,
20 what did it cover. Even if there were more detail, that still
21 wouldn't show that it was covered by the attorney-client
22 relationship if there was no attorney-client relationship.

23 And when there are some messages that there are a
24 fair number of recipients, who are those other people? Are
25 they attorneys? Are they agents of attorneys? Are they just

1 other people who, therefore, would not be covered by any kind
2 of attorney-client relationship or work product relationship?

3 So we're nowhere near what we need and as Mr. Burnham
4 said a moment ago, it's their burden. So if this is it, they
5 clearly have not met the burden at all because they haven't
6 shown that there is an attorney-client relationship and with
7 whom and when.

8 **THE COURT:** Mr. Burnham --

9 **MR. SPEAKER:** Your Honor, we -- sorry, Your Honor. I
10 didn't mean to interrupt the Court.

11 **THE COURT:** Well, I was going to ask Mr. Burnham or
12 Dr. Eastman. Are you satisfied in any of these conversations
13 that the Court is not involved with prior to our hearing today
14 with any resolution from this meeting and conferring with the
15 Select Committee?

16 **MR. BURNHAM:** Your Honor, I think the only way to
17 address these questions regarding the sufficiency of this
18 description or that description almost have to be taken on a
19 document-by-document basis because for each document, there's
20 different things that you can disclose or not disclose that
21 won't endanger the privilege itself.

22 We've always been happy to answer specific questions
23 from the Defendants. For example, we've explained to them that
24 at certain times, both Donald Trump himself and the Committee
25 were clients of Dr. Eastman and if they have specific questions

1 about one Bates number of another Bates number, we might be
2 able to answer those questions. It's a little hard to address
3 just generalized claims that the descriptions aren't sufficient
4 enough because, as I said, we're constrained by protecting the
5 privilege itself.

6 **THE COURT:** Concerning the attorney-client details,
7 Dr. Eastman's privilege logs list the senders and recipients
8 and the respective roles for each contested email. Now, these
9 roles include attorneys, consultants and staff members and
10 you'll see a summation of that at the bottom of the two-page
11 log.

12 The privilege log also does not specify which, if
13 any, cases the consultants were authorized to work on and the
14 scope of that authorization. The attorney-client privilege
15 does not attach to all communications with any attorney. The
16 communications must be between a client and the client's
17 attorney or their agents.

18 And on Friday, February 11th, which is Docket 101,
19 the Select Committee filed a notice seeking evidence of the
20 relevant attorney-client relationships and any applicable joint
21 defense or common interest agreements. In addition, the Select
22 Committee stated that on February 3rd and February 8th, it
23 asked Dr. Eastman for an engagement letter, retainer agreement
24 or other writing clarifying the scope of his representation of
25 Former President Trump or his campaign. And the document goes

1 on to allege that Dr. Eastman has allegedly not responded to
2 these requests.

3 So Mr. Letter, on behalf of the Select Committee,
4 what specific information regarding attorney-client
5 relationships do you believe is lacking from the privilege
6 logs, and why do you believe that the Select Committee is
7 entitled to that information?

8 **MR. LETTER:** Your Honor, as I say, the very first
9 thing we need to know is, is there even any attorney-client
10 relationship at all, what did it cover, the capacity of the
11 person who was supposedly being represented.

12 For example, in a -- I believe there are some claims
13 that have been made of attorney client or attorney work product
14 or both in early November and there's -- it's publicly
15 available, a deposition that Mr. Giuliani gave when he said,
16 (quote), "At this point -- which was November 19 --
17 "Mr. Eastman is not a member of the team." I don't know
18 exactly when he became a member of the team but my recollection
19 -- best recollection would be sometime in December. So if
20 Mr. Giuliana was right, then Mr. Eastman looks like had no
21 attorney-client relationship with Mr. Trump at all at that
22 point.

23 Now that may be wrong, I don't know, but that's the
24 kind of thing. So fine, so show us an engagement letter, show
25 us a common interest something that says that Mr. Trump

1 retained Mr. Eastman to represent him, this, that, the other.
2 As I said, this is by far the most basic kind of information
3 that if we don't have, it's very difficult to respond to.

4 And I'll say it one more time, clearly then it means
5 that Mr. Burnham can't be meeting the burden that he has if he
6 can't even show there's a relationship, attorney-client
7 relationship.

8 **MR. BURNHAM:** Your Honor, I think there's a couple
9 things that --sorry, was the Court about to --

10 **THE COURT:** No, I just want to make certain that I'm
11 asking you or Dr. Eastman about objections that you might have
12 to providing evidence of the attorney-client relationship to
13 support these privilege assertions, and any objections to
14 providing evidence of consultant or staff relationships to
15 support these privilege associations -- assertions.

16 **MR. BURNHAM:** Your Honor, I think our first objection
17 is to the unstated priors that sort of underly the Committee's
18 arguments.

19 The work product and privilege claims are not
20 coextensive with whatever is spelled out in common interest
21 agreements or retainer letters or engagement letters or similar
22 documents. For example, privilege can attach to prospective
23 client communications, to work product undertaken with the view
24 to representing a client later to be engaged, work product
25 discussions, and work product itself can be generated outside

1 the confines of some formally written common interest agreement
2 or similar document. The underlying assumptions of the
3 Committee's legal position they're asserting here just simply
4 aren't correct. Certainly written documents are relevant to
5 whether a prospective client, attorney-client relationship or
6 work-product situation existed; but as I said, they're by no
7 means coextensive with that.

8 And secondly, I think Your Honor raised this issue
9 before. They simply have no authority they can cite to week by
10 week, status by status, demand various documents that they
11 think would be useful to them. They've cited no authority in
12 support of that request.

13 And our basic position is, when we make our filing
14 before Your Honor -- whenever that date ends up being set --
15 well we're prepared to demonstrate to the Court's satisfaction
16 where and when work product and attorney-client privilege and
17 other privileges apply and to whom.

18 And I'll just note, finally, that another underlying
19 assumption that underlies a lot of this, including in the
20 Government's objection, is that anytime a non-attorney or
21 non-expert is included in a work-product communication, the
22 privilege doesn't apply, that's simply not true. So there are
23 a number of problems with the positions that the Congressional
24 Defendants are advancing here.

25 **THE COURT:** Based on the Select Committee's

1 representation about which document it deemed priorities, this
2 Court had ordered Dr. Eastman to begin his production with
3 communications from January 4th through January 7th of 2021.
4 Dr. Eastman produced those documents on February 1st and
5 February 2nd.

6 Now given the importance and urgency of the
7 Committee's inquiry, the Court intends to expedite an in-camera
8 review of the challenged documents from those days. There are
9 a total, according to my count -- and you can correct me --
10 130 challenged documents in that time period comprising
11 568 pages.

12 The Select Committee has suggested the following
13 briefing schedule.

14 The Select Committee's opening brief would be due
15 Monday, February 21st. Dr. Eastman's response brief due
16 Monday, February 28th. The Select Committee reply brief due
17 Thursday, March 3rd.

18 So to the Select Committee, how long do you believe
19 is necessary to fully brief your objections to these documents
20 and are you requesting the briefing schedule suggested in your
21 notice from last Friday that I received -- which is
22 Document 101 -- and that briefing schedule is contained on page
23 4, lines 20 through 22.

24 Mr. Letter?

25 **MR. LETTER:** I apologize, Your Honor. I wasn't sure

1 what you're asking me.

2 We have suggested, as you noted, we have suggested
3 that briefing schedule and I apologize. I'm not sure.

4 Were you asking me something different from that?
5 I'm sorry.

6 **THE COURT:** I'll turn to Dr. Eastman then.

7 Really, the same question, Dr. Eastman.

8 How long do you believe it's necessary to fully brief
9 your responses to the objections, and do you have objections to
10 the Select Committee's proposed briefing schedule set forth in
11 Document 101 on page 4?

12 **MR. BURNHAM:** We do have objections, Your Honor. The
13 first is as previously stated.

14 I believe the first brief should come from us, rather
15 than the Committee, as they propose, giving us as the holders
16 of the burden an opportunity to reply, so that's the first
17 objection.

18 And the second would be if Your Honor would want to
19 order interim briefing, so to speak, of the critical dates from
20 the Committee's point of view, we'll certainly do our best to
21 comply with that. I'd ask for two weeks to file our initial
22 brief if Your Honor agrees with our view of the way the
23 briefing schedule should go. And then however long the
24 Committee needs to respond to that, they can have, and then we
25 won't need very long to reply.

1 **THE COURT:** Given the volume of documents and the
2 objections and responses, I would be inclined to allow
3 oversized briefing in this matter.

4 And how many pages would each of the parties feel
5 comfortable with in this briefing? In other words let's not
6 waste --

7 **MR. BURNHAM:** Just offhand --

8 **THE COURT:** In other words, let's not waste time and
9 start to brief and then come back to the Court and tell the
10 Court that the page limitations are inadequate. Let's get that
11 resolved right now and save some time.

12 **MR. BURNHAM:** Your Honor, would about 40 pages be --
13 we might not need that but about 40 pages, I think, would be a
14 good number.

15 **THE COURT:** Mr. Letter?

16 **MR. LETTER:** Your Honor, that sounds fine to us. I
17 guess we should get a little more if Mr. Burnham -- if we're in
18 the middle and he's getting a reply, maybe we should get a
19 little more than he does but on our briefing schedule we're
20 happy to give him a little more if he's in the middle.

21 **THE COURT:** Well, to balance this out because of the
22 opportunity to respond, would 60 pages total? In other words,
23 whoever is the initial party that the Court directs to file the
24 opening brief would have 40 and the reply would be 20, or
25 whatever number you choose. But the other party who is not the

1 initial opening brief and is doing the responsive briefing
2 would have a total equal number of pages, 60 for instance. And
3 I don't care what that number is, I just care that each of you
4 have an equal opportunity in terms of the pages that you submit
5 to the Court. So I don't care if it's 40 and 15 -- which would
6 be a total of 55. I don't care if it's 40 and 10 but I just
7 don't want to be bothered by a request that you're part way
8 through the briefing and we're wasting time on minutia like
9 this.

10 **MR. LETTER:** Your Honor, that sounds --

11 **THE COURT:** So do you want me to step off the bench
12 for just a moment because this is quite frankly what I call not
13 rocket science. You two can have a conversation and work that
14 out between the two of you. In fact, I feel a strong need for
15 a cup of coffee. I'll be back in five minutes, make your
16 decision, thank you.

17 **(Brief recess taken from 1:41 p.m. to 1:51 p.m.)**

18 **THE COURT:** Mr. Burnham, I can't see you for some
19 reason. Can you hear me, sir? There you are. Thank you.

20 All right. I can see you, Mr. Letter, I can see
21 Mr. Burnham, I can see Mr. Plevin, I can see Dr. Eastman. And
22 I think for our purposes, that's sufficient.

23 First of all, thank you for your courtesy.

24 Did you have time just to informally meet and confer,
25 Mr. Letter or Mr. Burnham and Dr. Eastman?

1 **MR. BURNHAM:** We did, Your Honor.

2 **THE COURT:** And what would the pagination be -- the
3 number of pages, I'm sorry?

4 **MR. BURNHAM:** We agreed of 60 per side so --

5 **THE COURT:** All right. Sixty per side, thank you.

6 **MR. BURNHAM:** -- forty for the opening, 20 for the
7 reply and 60 in between.

8 **THE COURT:** Mr. Burnham, you represented earlier that
9 Dr. Eastman was prepared to demonstrate to the Court's
10 satisfaction where, when, and to whom the privilege is applied.
11 In determining when and how the privilege attaches is an
12 important part of challenging the privilege.

13 If the Court sets an expedited briefing schedule, is
14 Dr. Eastman prepared to provide evidence of attorney and agent
15 relationships, not only to the Court but also to the Select
16 Committee?

17 **MR. BURNHAM:** To the extent the evidence is not
18 itself privileged, we'd be prepared to demonstrate that, to
19 meet our burden, in other words.

20 **THE COURT:** Well this would drive at the request by
21 the Committee to show evidence of a actual attorney-client
22 relationship and that might be in the form of an agreement or
23 some other form. And so I apologize for not understanding the
24 answer. I'm going to ask you that question again, sir. And
25 that is --

1 **MR. BURNHAM:** The question is are we willing --

2 **THE COURT:** It's twofold. And that is, are you
3 prepared to provide evidence of the attorney and agent
4 relationship, not only to this Court but also to the Select
5 Committee?

6 **MR. BURNHAM:** We're prepared to provide it to this
7 Court and the Select Committee to the extent the evidence is
8 itself not privileged. If -- if some of the evidence
9 substantiating the attorney-client relationship is itself
10 privileged -- as is sometimes the case with engagement letters
11 and such -- not always -- there might be an issue there we
12 would have to deal with. But to the extent that issue can be
13 dealt with, yes, we can provide that.

14 **THE COURT:** What I --

15 **MR. BURNHAM:** And perhaps it could be dealt with with
16 a waiver or through redactions or through some method such as
17 that.

18 **THE COURT:** All right. Mr. Letter?

19 **MR. LETTER:** Your Honor, I guess I'm not fully
20 understanding Mr. Burnham's question. Obviously one of the key
21 things here is relationship with Mr. Trump.

22 It seems to me well at a minimum, everything has to
23 be provided to Your Honor. Obviously it's, as you know from
24 your years of experience better than I do, the attorney-client
25 privileged claims are often resolved by courts through

1 in-camera inspection. But a question of -- since Mr. Eastman
2 has been saying, not just in this lawsuit but all over the
3 place, that he was Mr. Trump's attorney, I don't know why there
4 would be any problem with it being provided to us and the
5 public, some sort of retainer agreement about -- and when, how,
6 what -- covering what, et cetera, and for instance and that
7 does apply then also to the work product.

8 We noticed that in a number of cases, Mr. Eastman is
9 asserting work product over emails written by others without
10 any evidence of a privileged relationship. So if he's going to
11 claim work product over some (indisc.) somebody else, there
12 should be something evidencing a privileged relationship for
13 work product purposes.

14 So again, I would think that almost everything or
15 everything can be provided to us, as well as you, but at a
16 minimum, I don't know why it would be -- I would think
17 everything has to be provided to Your Honor to meet -- and if
18 it isn't, then Mr. Burnham has not met his burden.

19 **MR. BURNHAM:** I think that's right, Your Honor.

20 To be clear, we're happy to provide everything to the
21 Court, for sure.

22 And I think that's a good reason why it makes sense
23 for us to go first because we'll make our case that the
24 privilege exists and then if the Committee doesn't believe
25 there was an attorney-client relationship, that can be

1 something they can address in the response. And to the extent
2 possible, we'll try to provide the evidence in support of the
3 attorney-client relationship, not only to Your Honor but to the
4 Defendants to the extent we can do so consistent with the
5 privilege itself.

6 **MR. LETTER:** In responding briefly to that, Your
7 Honor.

8 Here, we're the ones who are challenging
9 Mr. Burnham's assertion -- Professor Eastman's assertion of the
10 attorney-client privilege. We think it makes more sense for us
11 to go first and last. We raise all these points and then
12 Mr. Burnham can provide all the information and then we'll get
13 a last page limited shot at explaining to you why that doesn't
14 meet it. So we think the way we proposed makes more sense.

15 **THE COURT:** All right. Any other comments by
16 Mr. Burnham or Mr. Letter or Dr. Eastman pursuant to this
17 hearing? And if not, then I'll turn to Mr. Plevin out of a
18 matter of courtesy and to see if he has any comments and then
19 we'll conclude the matter.

20 **MR. LETTER:** Your Honor, this is Mr. Letter. I don't
21 have anything further, thank you.

22 **THE COURT:** All right. Thank you for your courtesy.
23 Mr. Burnham?

24 **MR. BURNHAM:** Nothing further, Your Honor, thank you.

25 **THE COURT:** Thank you.

1 Dr. Eastman?

2 **DR. EASTMAN:** Thank you for the opportunity, Your
3 Honor, but from Chapman's perspective, this is not an issue
4 that concerns us unless either of the parties have questions
5 for Chapman about its email system or policies.

6 **THE COURT:** All right. I appreciate the parties'
7 patience and wisdom in this matter and I will issue an order
8 this evening with further directions to each of you.

9 Thank you very much.

10 **(Participants thank the Court)**

11 **(Proceeding adjourned at 1:58 p.m.)**

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CERTIFICATION

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.



February 15, 2022

Signed

Dated

TONI HUDSON, TRANSCRIBER