

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

Case No. 50-2009CA040800XXXXMBAG

JEFFREY EPSTEIN,

Plaintiff/Counter-Defendant,

v.

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

Defendants/Counter-Plaintiff.

**PLAINTIFF/COUNTER-DEFENDANT JEFFREY EPSTEIN'S
RESPONSE IN OPPOSITION TO DEFENDANT/COUNTER-PLAINTIFF
BRADLEY EDWARDS' MOTION FOR PROTECTIVE ORDER RELATING TO E.W.'S
DEPOSITION AND MOTION TO COMPEL
E.W. TO ANSWER QUESTIONS RELATING TO THE
CRIMES VICTIMS' RIGHTS ACT AND TO REOPEN DEPOSITION**

Plaintiff/Counter-Defendant, Jeffrey Epstein ("Epstein"), responds in opposition to the Motion for Protective Order [D.E. 1026] filed by Defendant/Counter-Plaintiff, Bradley Edwards ("Edwards"), relating to the deposition of E.W.¹ [D.E. 1027], and moves to compel her to answer questions relating to the Crimes Victims' Rights Act ("CVRA") action and to reopen her deposition, and in support states:

BACKGROUND

In support of his malicious prosecution Counterclaim, Edwards plans to call as witnesses his three clients – L.M., E.W. and Jane Doe. E.W. was a plaintiff in a lawsuit she brought against Epstein until she settled her claims in 2010. E.W., along with L.M., is currently a plaintiff in the

¹ Although Edwards' counsel claimed that Edwards' clients wished to remain anonymous, Edwards identified E.W.'s name in his Motion and filed her deposition testimony with the Court.

CVRA action against the federal government. E.W. is not a plaintiff in this litigation. She, in fact, has released Epstein from any and all claims. Importantly, only Edwards is seeking to recover money from Epstein in this lawsuit. Epstein has filed a separate Motion to Re-Open Discovery to Take Depositions of L.M. and Jane Doe. Epstein incorporates the arguments set forth in that Motion here.

INTRODUCTION

This case is not about Edwards' three clients' civil lawsuits against Epstein, which settled and were fully resolved in July 2010. Rather, it is about the economic windfall that Edwards seeks for his alleged "anxiety" and "emotional distress" that *he* suffered as a result of Epstein's filing of a Complaint against him eight years ago.

Epstein has tried to focus this case on the publicly available information about Rothstein, the Ponzi scheme, the use of Edwards' clients' cases against Epstein in the Ponzi scheme and the excessive and unorthodox litigation practices engaged in by Edwards while holding himself out as a partner of Rothstein, Rosenfeldt & Adler which caused Epstein to suspect Edwards' connection to Rothstein. Unfortunately, Edwards' trial strategy, to analyze and test the veracity of each of the individual allegations made in the Complaint through the testimony of his clients, makes each of them a key witness in this case. (12/5/17 Tr. 85:1-7; 85:19-22; 131:11-12.)²

Edwards plans to "clear his name," recover damages and rid himself of his so-called "anxiety" and "emotional distress" brought on by Epstein's filing and continuing of this lawsuit by forcing his three clients, including E.W., into Court to rehash the details of their claims against Epstein, which they settled and put behind them more than seven years ago. The three individuals have no interest in and will receive no benefit from the outcome of this litigation, but Edwards'

² Excerpts of the December 5, 2017, hearing transcript are attached hereto as **Exhibit A**.

examination into an allegation-by-allegation defamation analysis of the original Complaint requires inquiry of E.W., as well as L.M., into the areas alleged, including the NPA, the CVRA action and the details of his clients' claims because Edwards has made those central to the trial of this matter.

E.W. is a client of Edwards who asserted tort claims against Epstein. Those claims were resolved through a confidential settlement agreement between E.W. and Epstein in July 2010. E.W., together with L.M.³, also brought a Crimes Victims' Rights Act action against the United States Government. The CVRA action is ongoing and, in that action, E.W. and L.M. are attempting to set aside a Non-Prosecution Agreement ("NPA") Epstein entered into with the United States Government.

Edwards has informed the Court that in order to establish his burden of proof he will, among other things:

[Establish] Epstein's motive to target Bradley Edwards for extortionist purposes, [and] prove the leadership role Bradley Edwards had in the joint prosecution effort of the multiple civil claims being prosecuted against Epstein with their attendant punitive damage exposure *as well as the Crime Victim's Rights Act case challenging Epstein's Non-Prosecution Agreement, which was spearheaded by Bradley Edwards and exposes Epstein to lengthy incarceration for his extensive history of child molestations.*

(11/22/17, Edwards' Response in Opposition to Epstein's Revised Omnibus Motion in Limine, e.s.) [D.E. 1089.]

Edwards intends to prove that Epstein's motive for filing this action was to, among other things, force Edwards to abandon his efforts to set aside the NPA through the CVRA action:

10 And we intend to prove that Jeffrey
11 Epstein's motive in filing these knowingly
12 false claims against Brad Edwards - **his**
13 **motive** was to extort Bradley Edwards into

³ L.M. also resolved her claims more than seven years ago, in July 2010.

14 abandoning or cheaply compromising the
15 rights of his clients, **and abandoning his**
16 **efforts through the Crime Victims' Rights**
17 **Act case to set aside the non-prosecution**
18 **agreement.**

(11/29/17 Tr. 106:10-18, e.s.)⁴

3 And Mr. Epstein clearly knows that
4 Mr. Edwards is lead counsel in this Crime
5 Victims' Rights Act case. He clearly knows,
6 because he's a participant in that case. He
7 has intervened in the case. He knows that
8 the consequences of that Crime Victims'
9 Rights Act case could be that he loses the
10 immunity that he negotiated with the U.S.
11 Attorney's Office.
12 **So being able to push Brad Edwards**
13 **aside as the primary moving force in the**
14 **Crime Victims' Rights Act case is obviously**
15 **a reasonable conclusion from those**
16 **circumstances.**

(11/29/17 Tr. 112:3-16, e.s.)

Edwards has argued that the jury must be informed about both the NPA and the CVRA:

13 MR. SCAROLA: Your Honor, I believe
14 that it is unavoidable that the jury be
15 informed as to what the non-prosecution
16 agreement is. It would be our intention to
17 enter it into evidence. They need to
18 understand what the Crime Victims' Rights
19 Act is.

(11/29/17 Tr. 110:13-19.)

Edwards has identified E.W. on his Witness List. [D.E. 1042, ¶ 15.] Edwards has also designated and cross designated portions of E.W.'s testimony to be used at the trial of this matter. [D.E. 1022; D.E. 1130.] Because E.W. is incarcerated, the parties can only rely on her deposition testimony at trial.

⁴ Excerpts of the November 29, 2017, hearing transcript are attached hereto as **Exhibit B.**

The Court has made it clear that it intends to allow Edwards to present evidence and testimony concerning Edwards' representation of his three clients (E.W., L.M. and Jane Doe) of claims they brought against Epstein:

24 THE COURT: The only thing I would say
25 to that, Mr. Scarola, is I don't want to mix
1 apples and oranges. And that is, I don't
2 want to place the Court's incriminator [sic] on
3 getting too far afield and turning this into
4 a case about alleged sexual exploitation,
5 particularly of others, outside of
6 Mr. Edwards' representation. That would
7 serve only to inflame the jury, and, again,
8 would cause the playing field to become
9 unleveled, because the defense to the
10 malicious prosecution claim, i.e., Epstein
11 and his attorneys, would have to be fighting
12 claims that they may not even know about
13 much, much less the ones that they do.

14 *So again, I want to center on those
15 three claims that were brought by
16 Mr. Edwards on behalf of his clients*, and
17 center on those aspects that would be
18 relevant to the malicious prosecution claim
19 and the alleged ginning up of those claims,
20 the alleged attempt to align himself with
21 Rothstein, the alleged attempt to factor
22 these cases, potentially Mr. Edwards'
23 conduct as it related to those factoring
24 matters.

(12/5/17 Tr. 79:24-80:24, e.s.)

The Court has also recognized that the NPA and the CVRA action are going to become a part of the trial:

3 there is no way around the fact that the NPA
4 is going to become a part of this trial.

(11/29/17 Tr. 108:3-4.)

11 THE COURT: The NPA, I have already
12 indicated that the inclination would be -
13 if properly predicated - would be allowed.

(11/29/17 Tr. 167:11-13.)

9 Pleadings of Jane Doe 1 and 2 vs. US
10 case.

11 MR. SCAROLA: That's the CVRA case,
12 Your Honor.

13 THE COURT: That will likely be
14 discussed - obviously, it will be
15 discussed. How much of the pleadings that
16 need to be addressed will be a matter of the
17 Court's consideration later.

(12/5/17 Tr. 215:9-17.)

OCTOBER 12, 2017, DEPOSITION

On October 12, 2017, Epstein's counsel commenced, but did not conclude because of Edwards' counsel's direction to the witness not to answer questions until the issue of a protective order had been resolved, the deposition of E.W. at the Gadsden Correctional Facility where E.W. is incarcerated until April 2018. Although E.W. was represented by Edwards himself during her deposition, Edwards' counsel (who was not representing E.W.) instructed her not to answer questions that related to the CVRA action because he claimed they were not relevant and because E.W. did not have the opportunity to prepare for that line of questioning. Specifically, Edwards' counsel asserted:

6 MR. SCAROLA: Excuse me, I'm going to
7 interrupt for just a moment. Do you have other
8 questions relating to the Crime Victims' Rights Act
9 case?

10 MR. GOLDBERGER: I do.

11 MR. SCAROLA: Okay. I am going to object to
12 your examination of [E.W.] on issues relating to
13 another case. **Those matters don't have any relevance**
14 **or materiality to this lawsuit in which she is being**
15 **deposed;** her counsel has not had an opportunity to
16 prepare her for a deposition in the Crime Victims'

17 Rights Act case. I am going to instruct her not to
18 answer any additional questions regarding the Crime
19 Victims' Rights Act case. You may proffer the
20 additional questions that you'd like to ask for the
21 record, but she will not answer those pending our
22 ability to obtain a protective order.
23 MR. GOLDBERGER: Well, we have lots of
24 questions that we intend to ask about the Crime
25 Victims' Rights Act, **and based on your cause of action**

1 **and your theory that you've explained to the court as**
2 **to why Mr. Epstein filed a claim against your client,**
3 **it is relevant** and I recognize that you are advising
4 the client not to answer the question or -
5 MR. SCAROLA: She's not my client, this is a
6 witness.
7 MR. GOLDBERGER: And you're instructing -
8 MR. SCAROLA: And I am instructing her - **I**
9 **am informing you that additional questions relating to**
10 **the Crime Victims' Rights Act case, beyond those that**
11 **have already been asked and answered, are not relevant**
12 **or material, or reasonably calculated to lead to**
13 **relevant and material information.**

(E.W.'s 10/12/17 Tr. 74:6-75:13, e.s.) [D.E. 1027.]

6 MR. SCAROLA: Yes. The questions are
7 irrelevant, immaterial, not reasonably calculated to
8 lead to the discovery of relevant and material
9 information in this lawsuit.

11 MR. SCAROLA: In addition to that, this
12 witness was not noticed as being deposed in a separate
13 CVRA action. Her counsel, with regard to the separate
14 CVRA action were not noticed, therefore her counsel
15 have not had an opportunity to consult with her
16 regarding giving testimony in the separate CVRA -

18 MR. SCAROLA: -- action. So those are the
19 objections that were previously raised, in addition to
20 others stated as to specific questions, they are of
21 the objections that I will incorporate simply by
22 saying "same objection, same instruction," for
23 purposes of not burdening the record with repetition
24 of the same objection and same instructions.

(E.W.'s 10/12/17 Tr. 97:6-24.) [D.E. 1027.]

Edwards' counsel suggested that questions to E.W. be proffered on the record and he would raise the appropriate objections and move for a protective order and that E.W. would not answer those questions until he had the ability to move for a protective order, thus leaving this issue open for further deposition testimony. (E.W.'s 10/12/17 Tr. 76:24-77:8.) [D.E. 1027.]

The following questions were posed to E.W. to which she was instructed not to answer based on these objections:

- At any time did the FBI agents -- did any FBI agents tell you that Mr. Epstein was pleading guilty in state court to avoid federal prosecution?
- Did you ask the FBI at any time to speak to prosecutors prior to Mr. Epstein entering into his guilty plea?
- Did you have the prosecutor's phone number so you could call her?
- Did you, in fact, receive a victims' notification letter?
- And on that letter, did it not have the prosecutor's direct-dial number?
- And did the prosecutor, in fact, tell you in person that you could call her at any time to discuss this matter?
- Do you recall receiving a letter from Ms. Villafania when you met with the FBI at Publix in 2007?
- Do you deny that you had Ms. Villafania's direct phone number to call her if you so decided?
- Do you know whether the non-prosecution agreement made it easier for you to seek damages against Mr. Epstein?
- How many times did you meet with the FBI at Publix to discuss the non-prosecution agreement involving Jeffrey Epstein?
- Do you recall when you did meet with [Special Agent Nesbitt Kuyrkendall], at no time did you ask to confer with anyone from the government about any potential criminal charges, decisions, or about any partial resolution of the matter involving Jeffrey Epstein?

- Is it true that, between the time of that interview in August of 2007, and September of 2007 when Mr. Epstein signed his non-prosecution agreement, you never contacted either Agent Nesbitt Kuyrkendall or her co-agent asking for information about the investigation; or asking to confer with anyone from the government about any potential criminal charges, decisions, or about the resolution of the matter?
- What were your goals as a plaintiff in filing the CVRA case?
- Was one of your goals to invalidate the non-prosecution agreement?
- Have you ever discussed with [L.M.] the filing of the CVRA lawsuit?
- Have you ever discussed with any non-lawyer, or someone working for a lawyer, the reasons for filing the CVRA case?
- Do you realize that if you prevail on the CVRA case and the non-prosecution agreement is ruled void, any civil settlement that relied on the Civil Victims' Rights Act case could be vacated?
- Are you seeking an apology from the government for the filing of the CVRA case? Is that important to you?

(E.W.'s 10/12/17 Tr. 77-82, 98-100.) [D.E. 1027.]

ARGUMENT

In his Complaint, Epstein alleged that, after Edwards joined Rothstein, Rosenfeldt & Adler, he filed a Motion asking the Court to make the NPA public. (D.E. 5, ¶ 42.1.) That motion was filed in May 2009 in one of Edwards' client's individual civil actions against Epstein, *not* in the CVRA action. (*Jane Doe v. Epstein*, Case No. 08-CV-80893, D.E. 74.) At the time Edwards filed the motion, he and his three clients had the NPA and there was no legitimate purpose for them to make the agreement public. Furthermore, the CVRA court had then recently (February 2009) denied Edwards' Motion to Unseal the NPA in that action. (*Jane Doe v. U.S.*, Case No. 08-CV-80736, D.E. 36.)

Edwards wants the Court to believe, however, that Epstein's motive in filing this action was to stop Edwards from *challenging* the NPA through the CVRA action. What Edwards failed

to inform the Court about at the recent hearings, however, is that at the time Epstein filed suit against Rothstein and Edwards in December 2009, the CVRA action had been sitting dormant since February 2009 and that he took no further action in that matter until after Edwards settled his clients' cases with Epstein and then only after the Court administratively closed the case in September 2010. Edwards also failed to inform the Court that in August 2008, he advised the CVRA court that he was unsure if the relief he was seeking was in his clients' best interest. ("Because of the legal consequences of invalidating the current agreement, it is likely not in my clients' best interest to ask for the relief that we initially asked for.") (8/4/08 Tr. 4-5) (Ex. C.) Furthermore, in each of their Complaints against Epstein, Edwards' three clients relied on the NPA as a basis that Epstein could not deny liability of their claims when they initiated their civil lawsuits against Epstein in August and September 2008. (*E.W. v. Epstein*, 15th Judicial Circuit Case No. 50-2008-CA-028058, D.E. 4, ¶¶ 19-20); (*L.M. v. Epstein*, 15th Judicial Circuit Case No. 50-2008-CA-028051, D.E. 4, ¶¶ 19-20); (*Jane Doe v. Epstein*, U.S. District Court, Southern District of Florida Case No. 9:08-cv-80893, D.E. 1, ¶¶ 19-21). The filing of his clients' Complaints coupled with Edwards' statements to the CVRA court led Epstein to believe that Edwards' clients were *not* pursuing their remedies in the CVRA action. It was not until March 21, 2011, about a year after settling their lawsuits with Epstein, when E.W. and L.M. filed their Motion for Summary Judgment for Finding Violations of the NPA, that it was clear that E.W. and L.M. were continuing with their efforts to invalidate the NPA.

Epstein should be able to present evidence at trial to show that E.W. and L.M.'s pursuit in invalidating the NPA was not a motive for filing his action against Rothstein and Edwards. The types of questions posed to E.W. during her deposition and the many logical follow-up questions concerning the CVRA action are relevant. They shed light on the timing of the filing of the CVRA

action, the lack of prosecution of the case, how the NPA actually benefited E.W. up to the point she settled her case with Epstein, her discussions with third parties, including law enforcement, about the alleged acts and her past recollections and positions. In addition, E.W.'s responses to the questions are expected to undermine her credibility because her statements have been inconsistent. Finally, it is believed that E.W.'s responses will demonstrate a lack of memory as to events that occurred years ago when the alleged acts occurred. The testimony sought is relevant and will allow the jury to weigh E.W.'s testimony and credibility at trial.

On October 26, 2017, Edwards filed a Motion for Protective Order asking that the Court preclude E.W. from responding to those questions proffered on the record with respect to the CVRA action. [D.E. 1026.] During the deposition, Edwards' counsel, who did not and does not represent E.W., instructed E.W. not to respond to questions relating to the CVRA action and objected to the line of questioning claiming the information was irrelevant, immaterial, not reasonably calculated to lead to the discovery of relevant and material information in this lawsuit, and because E.W. did not have an opportunity to prepare for that line of questioning. Edwards' counsel indicated that before E.W. would answer the questions he needed the ability to move for a protective order, thus leaving this issue open for further deposition discovery. (E.W. 10/12/17 Tr. 76:24-77:8; 97:6-24.) [D.E. 1027.] As set forth above, Edwards himself has taken the position that the CVRA action *is relevant* and has made it a central focus of Epstein's alleged motive for bringing this action. Edwards cannot have it both ways. He cannot instruct E.W. not to answer questions about the CVRA action on the grounds that they are irrelevant, but then argue that the CVRA action is the motive behind Epstein's filing of this case.

Epstein continues to maintain that Edwards' malicious prosecution Counterclaim is limited to an analysis of the civil proceeding filed by Epstein against Edwards, which does not relate to

the merits of the cases filed by Edwards' clients against Epstein. The case is not about whether Edwards' clients' tort claims are true but, rather, it is about whether Epstein lacked probable cause to initiate and continue the original proceeding. To prevail on his Counterclaim for malicious prosecution, Edwards must prove that Epstein filed a civil proceeding against him "without probable cause." *See Korman v. Kent*, 821 So. 2d 408, 410 (Fla. 4th DCA 2002). Edwards' burden is "onerous." *See Burns v. GCC Beverages, Inc.*, 502 So. 2d 1217, 1219 (Fla. 1986).

While Epstein disagrees that he is required to prove that each allegation of the Complaint is true, he must now be allowed to defend the allegations. Accordingly, he should be allowed to re-open E.W.'s deposition to ask the proffered questions and reasonable follow up about the CVRA action and any other issues that may now be a central focus of this case in light of the Court's recent rulings.

CONCLUSION

Edwards himself has insisted that the CVRA action is relevant to establish Epstein's motive for initiating this proceeding. Accordingly, the Court should deny Edwards' Motion for Protective Order and grant Epstein's request to re-open E.W.'s deposition, both as to the CVRA action and follow up as well as other questions that are relevant to this proceeding. Because E.W. is incarcerated and will not be released until after the special set trial of this matter, Epstein will be prejudiced if he is not allowed to re-open the deposition.

CERTIFICATE OF SERVICE

I certify that the foregoing document has been furnished to the attorneys listed on the Service List below on January 10, 2018, through the Court's e-filing portal pursuant to Florida Rule of Judicial Administration 2.516(b)(1).

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West Palm Beach, Florida 33401
(561) 727-3600; (561) 727-3601 [fax]

By: /s/ Scott J. Link

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*Trial Counsel for Plaintiff/Counter-Defendant
Jeffrey Epstein*

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EXHIBIT A

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

Case No. 502009CA040800XXXXMB

JEFFREY EPSTEIN,

Plaintiff/Counter-Defendant,

vs.

SCOTT ROTHSTEIN, individually,
BRADLEY EDWARDS, individually,

Defendants/Counter-Plaintiff.

_____/ VOLUME I

TRANSCRIPT OF PROCEEDINGS

DATE TAKEN: Tuesday, December 5th, 2017
TIME: 10:02 a.m. - 4:35 p.m.
PLACE: 205 N. Dixie Highway, Room 10C
West Palm Beach, Florida
BEFORE: Donald Hafele, Presiding Judge

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

Sonja D. Hall
Palm Beach Reporting Service, Inc.
1665 Palm Beach Lakes Boulevard, Suite 1001
West Palm Beach, FL 33401
(561) 471-2995

1 about children being transported on the
2 airplane?

3 THE COURT: The latter is the one that
4 will have to be discussed further, again, as
5 I pointed out earlier, when the context
6 comes up and it's introduced or attempted to
7 be introduced outside the presence of the
8 jury.

9 To the, what I perceive to be three
10 questions, the two former questions, the
11 answer would be yes.

12 MR. SCAROLA: Will the Court take
13 judicial notice of Florida Statute 90.404
14 (2), which is commonly referred to as the
15 Williams Rule, and Federal Rule 415(g),
16 which expressly permits the introduction of
17 evidence with regard to other sexual
18 assaults against children, so that the jury
19 is aware of the fact that Mr. Edwards, not
20 only had a good faith basis to conduct this
21 discovery, but quite arguably would have
22 been grossly negligent to have failed to
23 pursue it?

24 (THE COURT: The only thing I would say
25 to that, Mr. Scarola, is I don't want to mix

25 | MR. SCAROLA: I am -- I am sorry. I

1 number 88 is Hyperion Air passenger
2 manifest. Same ruling. Same thing with the
3 flight information.

4 Eighty-nine. Passenger list, 90, same
5 ruling.

6 Notepad/notes, Maria.

7 MR. SCAROLA: Same argument.

8 THE COURT: Same ruling.

9 (Pleadings of Jane Doe 1 and 2 vs. US
10 case.)

11 (MR.) (SCAROLA: That's the CVRA case,
12 (Your Honor.)

13 (THE COURT: That will likely be
14 discussed -- obviously, it will be
15 discussed.) How much of the pleadings that
16 need to be addressed will be a matter of the
17 Court's consideration later.)

18 Epstein Fifth Amendment speech.

19 MR. SCAROLA: Those are just a
20 reference to deposition excerpts.

21 THE COURT: Reiter letter to Krischer.
22 That's already been talked about. That's a
23 duplication, unless he wrote another one.

24 I think it's a duplication. You can
25 check.

EXHIBIT B

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

Case No. 502009CA040800XXXXMB

JEFFREY EPSTEIN,

Plaintiff,

vs.

SCOTT ROTHSTEIN, individually,
BRADLEY EDWARDS, individually,

Defendants/Counter-Plaintiffs.

1

TRANSCRIPT OF PROCEEDINGS

DATE TAKEN: Wednesday, November 29th, 2017

TIME: 10:04 a.m. - 3:55 p.m.

PLACE 205 N. Dixie Highway, Room 10C
West Palm Beach, Florida

BEFORE: Donald Hafele, Presiding Judge

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

Sonja D. Hall
Palm Beach Reporting Service, Inc.
1665 Palm Beach Lakes Boulevard, Suite 1001
West Palm Beach, FL 33401
(561) 471-2995

1 plaintiffs' lawyers, and I'm going to target
2 one of these victims. I'm going to sue them
3 both, and I'm going to show them what
4 happens when you try to take on this
5 billionaire. That's what he was trying to
6 do. Plain and simple. And we are entitled,
7 I respectfully suggest, to be able to prove
8 just how big a motive that was, what's at
9 stake.

10 **THE COURT:** I'm not in disagreement
11 with you.

12 When this went on the board, my first
13 response to Mr. Link and his presentation as
14 to Mr. Epstein's reasons were what? Was
15 that this can be turned around directly to
16 harm potentially Mr. Epstein and provide
17 Mr. Edwards with the motivation. So I'm not
18 in disagreement with you.

19 The only thing I am concerned with --
20 certainly one of the more pertinent things
21 that I am concerned with for today's
22 hearing, again, relates back to how far we
23 are going to permit the jury to hear, or how
24 much we are going to permit the jury to hear
25 as it relates to these other claims.

1 Now, as you further described it --
2 again, subject to Mr. Link's rebuttal --
3 (there is no way around the fact that the NPA
4 is going to become a part of this trial.)

5 As I have indicated earlier, and the
6 reason for my question was to ensure that my
7 understanding was correct that the principle
8 reason -- or a principle reason Mr. Epstein
9 continues to invoke the Fifth Amendment is
10 because of the pendency of this NPA case,
11 correct?

12 **MR. LINK:** Generally, yes. It's not
13 the pending of the NPA case, but it's the
14 case --

15 **THE COURT:** The potential of a
16 criminal -- further criminal exposure if the
17 NPA gets revoked -- or whatever the
18 terminology is --

19 **MR. LINK:** That's correction, Your
20 Honor.

21 **THE COURT:** -- in Judge Marra's court,
22 assuming he's still the Judge on the case.

23 **MR. SCAROLA:** Just to clarify that
24 point, if I could.

25 **THE COURT:** Sure.

1 There's no way around it.

2 **MR. LINK:** We understand that, Judge.

3 **THE COURT:** Fine.

4 The question that I am going to pose to
5 you and Mr. Scarola now is how far we are
6 going to go with that agreement and where
7 the 403 analysis has to focus. So --

8 Not now. When you have your
9 opportunity.

10 Mr. Scarola.

11 **MR. LINK:** Champing at the bit, Your
12 Honor.

13 **MR. SCAROLA:** Your Honor, I believe
14 that it is unavoidable that the jury be
15 informed as to what the non-prosecution
16 agreement is. It would be our intention to
17 enter it into evidence. They need to
18 understand what the Crime Victims' Rights
19 Act is. What they don't need to do is to
20 resolve the legitimacy of 40 other
21 plaintiffs' claims.

22 Now, some of Mr. Epstein's (sic)
23 clients -- in fact, I think all three of
24 them -- are identified in the
25 non-prosecution agreement. So Mr. Epstein,

1 as part of the non-prosecution agreement,
2 agrees to compensate each of these 40 people
3 under specific circumstances. And that gets
4 us into a discussion as to why the federal
5 lawsuit was filed. And this is something
6 that we have referenced briefly in argument
7 before Your Honor earlier. But --

8 **THE COURT:** I want to stay on this
9 subject for just a moment, if I could. And
10 that is, tell me why you believe that the
11 motivation that Mr. Epstein may have had to
12 file this suit was relating to or is related
13 to this Jane Doe moving to unseal the NPA.
14 Explain that to me again, please.

15 **MR. SCAROLA:** Yes, sir.

16 I think that, obviously, motive can
17 only be proven through circumstantial
18 evidence if the defendant is not confessing.
19 And not only is Mr. Epstein not confessing,
20 he's refusing to give considerable relevant
21 testimony because of his assertion of both
22 the attorney-client privilege in the absence
23 of any assertion of advice of counsel
24 defense, as we have already established, and
25 his Fifth Amendment privilege. So we need

1 to prove what his motive is
2 circumstantially.

3 (And Mr. Epstein clearly knows that)

4 Mr. Edwards is lead counsel in this Crime
5 Victims' Rights Act case. (He clearly knows,
6 because he's a participant in that case. (He
7 has intervened in the case. (He knows that
8 the consequences of that Crime Victims'
9 Rights Act case could be that he loses the
10 immunity that he negotiated with the U.S.)
11 Attorney's Office.)

12 So being able to push Brad Edwards
13 aside as the primary moving force in the
14 Crime Victims' Rights Act case is obviously
15 a reasonable conclusion from those
16 circumstances. But it goes beyond that,
17 because direct threats were made to Bradley
18 Edwards by Jeffrey Epstein.

19 **THE COURT:** So the suggestion, I guess,
20 from the defense, the malicious prosecution
21 claim of Mr. Epstein is that he found it
22 necessary to file the lawsuit -- strike
23 that.

24 Yeah. He found it necessary to file
25 the lawsuit against Rothstein, Edwards and

1 collateral to the summary judgment -- the
2 summary judgment motion was made and then
3 not challenged. For those reasons, I'm
4 going to sustain the objection at this time,
5 again, subject to context for being able to
6 readdress it, if necessary.

7 **MR. SCAROLA:** Number four is sustained?

8 **THE COURT:** Yes, sir, for the reasons
9 stated in the record.

10 **MR. SCAROLA:** Understood.

11 **THE COURT:** (The NPA, I have already
12 indicated that the inclination would be --
13 if properly predicated -- would be allowed).

14 The Jane Doe, one of two complainants -- I
15 don't see any -- what would be the grounds
16 for objecting to that?

17 **MS. ROCKENBACH:** I'm not sure what the
18 relevance is. I'm not the proponent of the
19 evidence, but I don't see what relevance
20 there would be of Jane Doe's complaint.

21 The relevance in this malicious
22 prosecution action might be the allegations
23 of this complaint, this action. But when we
24 start bringing in other complaints as
25 exhibits for a jury to read, I think that

EXHIBIT C

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

JANE DOE,)	Case No.
)	08-80736-CIV-MARRA
Petitioner,)	
)	
-v-)	
)	
UNITED STATES OF AMERICA,)	
)	
Respondent.)	West Palm Beach, Florida
)	
)	August 14, 2008

TRANSCRIPT OF HEARING

BEFORE THE HONORABLE KENNETH A. MARRA

U.S. DISTRICT JUDGE

Appearances:

FOR THE PETITIONER

Bradley J. Edwards, ESQ., and
Paul G. Cassell, ESQ.

FOR THE RESPONDENT

Dexter Lee, AUSA, and
Ann Marie C. Villafana, AUSA

Reporter
(561) 514-3768

Stephen W. Franklin, RMR, CRR, CPE
Official Court Reporter
701 Clematis Street, Suite 417
West Palm Beach, Florida 33401

1 (Call to the order of the Court.)
 2 THE COURT: Good afternoon.
 3 VOICES: Good afternoon, Your Honor.
 4 THE COURT: All right. This is the case of In Re:
 5 Jane Does 1 and 2, case number 08-80736-CIV-MARRA.
 6 May I have counsel state appearances, please, and
 7 if you can please try and speak up so we can hear you.
 8 MR. EDWARDS: Okay. Brad Edwards, on behalf of
 9 Jane Doe 1 and 2.
 10 MR. CASSELL: Paul Cassell, along with Mr. Edwards.
 11 THE COURT: Good afternoon.
 12 MR. LEE: Good afternoon, Your Honor. For the
 13 United States Government, Dexter Lee, Assistant U.S.
 14 Attorney, and Marie Villafana.
 15 THE COURT: All right. Good afternoon.
 16 Mr. -- everyone, we're having trouble hearing you,
 17 so if you can try and speak up, and also if you could
 18 identify yourself before you begin speaking so the reporter
 19 can accurately indicate on the record who is speaking. I
 20 appreciate that.
 21 I scheduled this for a status conference in order
 22 to determine whether I'm going to need additional -- as far
 23 as the parties were concerned, whether either of the parties
 24 thought that I needed additional information in order to
 25 proceed with the pending motion by the Plaintiffs or whether

1 we have a complete record based upon what's already been
 2 submitted, and I wasn't quite sure where we were on that
 3 since we last met.
 4 So if I can hear from Mr. Edwards or Mr. Cassell
 5 first what the Plaintiffs' position as far as where we stand
 6 on the record in terms of whether I need additional facts,
 7 evidence, or there's going to be a stipulation submitted to
 8 me upon which I can rely.
 9 MR. EDWARDS: Sure.
 10 Your Honor, this is Brad Edwards.
 11 I believe that you do have a sufficient record, in
 12 that I don't think that -- I think that we're in agreement
 13 that additional evidence does not need to be taken in the
 14 case for Your Honor to make a ruling. We have actually met
 15 with the U.S. Attorney, and we've had meaningful discussions
 16 in an attempt to resolve our issues. I think the only issue,
 17 we can probably agree to this right now, is that the victims
 18 are unable at this point in time to go any further with
 19 requesting a remedy from the Court without the full and
 20 complete plea agreement being produced to us from the U.S.
 21 Government, and the U.S. Government's hands are tied in that
 22 there's a confidentiality agreement within that plea
 23 agreement that prohibits them from turning that over.
 24 So at this point in time, we would be asking Your
 25 Honor to enter an order compelling them to turn over that

1 agreement, and at that point in time I think we can meet
 2 again and probably resolve our disputes amongst ourselves.
 3 THE COURT: All right. So do I understand that
 4 you're modifying your claim for relief at this point and only
 5 seeking me to compel the Government to produce the plea
 6 agreement, or are you -- or is this a -- a preliminary step,
 7 after which you're then going to evaluate whether you want me
 8 to do something further?
 9 MR. EDWARDS: I think it's the latter, Your Honor.
 10 It is, and it will likely always be, our position that the
 11 victims' rights are violated. However, because of the legal
 12 consequences of invalidating the current agreement, it is
 13 likely not in my clients' best interest to ask for the relief
 14 that we initially asked for.
 15 So in order to effectively evaluate the situation
 16 and ask for the appropriate relief, we would just be asking
 17 Your Honor at this point in time to allow us to see the full
 18 entire plea agreement that is purportedly drafted to protect
 19 my victims. That only seems fair to know, you know, what the
 20 plea agreement says, especially in light of the fact that
 21 Mr. Epstein knows what the plea agreement says.
 22 THE COURT: All right. And then if I grant that
 23 relief, you will evaluate the agreement and then decide
 24 whether to either dismiss your case or go forward and ask for
 25 some additional relief?

1 MR. EDWARDS: That's correct, Your Honor.
 2 THE COURT: Is it your plan or is there any kind
 3 of -- been any kind of discussion between you and the
 4 Government as to what you -- if I grant the relief of
 5 requiring the Government to at least present you with the
 6 agreement and let you view it, has there been any discussion
 7 about you keeping it confidential and not letting it go any
 8 further than your clients and using it for your
 9 decision-making purposes, or do you wish to have it released
 10 to you, and you would be able to use it however you wished?
 11 MR. EDWARDS: Well, Your Honor, we would prefer
 12 that it be produced to us and not have to keep it
 13 confidential. I think that that creates an undue hardship on
 14 us. However, if it was Your Honor's order that we do
 15 maintain some confidentiality of the agreement, we would
 16 certainly abide by it.
 17 The reason we want it is not so that it's
 18 disseminated everywhere; however, there is a public interest
 19 in viewing what happens in the court process, and this is
 20 just part of it. There's no reason that it should be sealed
 21 or kept confidential. Seems to be an overwhelming reason
 22 to -- to make it public. However, that's not our intention.
 23 Our intention is just to view it, represent my clients and
 24 then evaluate it and ask the Court for the appropriate relief
 25 after we've seen it.