

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

E.W.,)
)
)
Plaintiff,)
)
vs.) Case No. 502008CA028058
) XXXXMB AD
JEFFREY EPSTEIN,)
)
Defendant.)
_____ X

PROCEEDINGS BEFORE THE

HONORABLE JUDGE DONALD W. HAFELE

May 22, 2009

8:30 a.m. - 9:30 a.m.

205 N. Dixie Highway
West Palm Beach, FL 33401

Jennifer DiLorenzo, court reporter

Page 2

APPEARANCES OF COUNSEL

On behalf of the Plaintiff:
 ROTHSTEIN, ROSENFELDT & ADLER
 BY: WILLIAM J. BERGER, ESQ.,
 Mizner Park Office Tower
 Suite 675
 225 NE Mizner Boulevard
 Boca Raton, FL 33432
 561-322-7761
 wberger@rra-law.com

ROTHSTEIN, ROSENFELDT & ADLER
 BY: BRADLEY J. EDWARDS, ESQ.,
 401 East Las Olas Boulevard
 Suite 1650
 Fort Lauderdale, FL 33394
 954-522-3456
 bedwards@rra-law.com

On behalf of the Defendant:
 BURMAN, CRITTON, LUTTIER & COLEMAN
 BY: ROBERT D. CRITTON, JR., ESQ.
 and MICHAEL J. PIKE, ESQ.,
 515 North Flagler Drive
 Suite 400
 West Palm Beach, FL 33401
 561-842-2820
 rcrit@bcclaw.com
 mpik@bcclaw.com

ESQUIRE CORPORATE SERVICES
 888.486.4044

Page 4

MR. BERGER: We have a couple of arguments to make and I just want to go through them - and Counsel has a copy of what I'm displaying to the Court - I just want to do an overview.

These parties, parties and nonparties, they should not be deposed until the Defendant, until his deposition has been completed, that's the first point. Also, now with regard to the number of times that our client should be deposed, we've reached an agreement on that, I'm not going to dwell on that.

Next, with regard to the actual questions themselves, our objection has to do with questions that go to the names of consensual sexual partners since the age of 10, the nature of consent --

THE COURT: Well, is consensual one of the conditions? I don't recall seeing that.

MR. BERGER: Well, what they've asked for is all.

THE COURT: Right, all.

MR. BERGER: And we're objecting to consensual - obviously if our clients were raped by somebody else, we're not objecting to that discovery --

ESQUIRE CORPORATE SERVICES
 888.486.4044

Page 3

Proceedings in the Matter of W.E. vs. JEFFREY EPSTEIN.
 May 22, 2009

THE COURT: Good morning, gentlemen. I have read the materials. I am familiar generally with the matters that are involved here, so we can get started.

Mr. Berger, go right ahead.

MR. BERGER: Good morning, Your Honor. William J. Berger and Brad Edwards for the moving parties, and that's E.W., who's the Plaintiff in one case today, and then there's L.M., who's a Plaintiff in another case that's in your division, and then there's Jane Doe, who's a Plaintiff in a federal case.

Judge, these are motions for protective orders by three young women who have sued the Defendant for sexually molesting them starting when they were 13 years old.

Judge, there's several reasons why these young women should not have to undergo what we think would be abusive discovery, and I would like to just present that to the Court --

THE COURT: Fine.

MR. BERGER: -- in an overview fashion.

THE COURT: Thank you.

ESQUIRE CORPORATE SERVICES
 888.486.4044

Page 5

THE COURT: Well, I wasn't aware that you were not objecting to that aspect of discovery. Thank you for that clarification.

MR. BERGER: -- and the nature of the consensual sexual activities and whether they received money. We feel that those types of questions are completely irrelevant, I'll argue that.

Our clients have federal and state privacy rights. There's no record showing, in other words, there's no evidence that's been presented to show that any of this discovery is needed.

The probative value, even if it is relevant, is outweighed by its unfair prejudice, and there's a tremendous problem with regard to third-party privacy rights of the consensual sexual partners since the age of 10 of our clients.

Now, going to the point about the timing of the deposition, we took Mr. Epstein's deposition on April 30th, a month ago. We got approximately 153 refusals to answer in 155 pages of questions.

Let me back up a minute. Under Rule 1.280(d), the Court has the discretion, upon a

ESQUIRE CORPORATE SERVICES
 888.486.4044

Page 6

1 showing of injustice or in the interest of
2 justice, to regulate the timing of discovery.
3 Typically it's done without relation to other
4 discovery, but the Court does have the power on
5 a showing of justice to regulate the timing.

6 So Mr. Epstein's deposition has started,
7 it was terminated a couple of hours into it when
8 it was not even halfway finished by Counsel for
9 the Defendant. They terminated his deposition,
10 didn't like the questions, and didn't like what
11 he was going to say. He refused to answer about
12 153 questions in that deposition. We got
13 virtually nothing out of him.

14 It's a manifest injustice for our clients
15 to have to be deposed - and they want to depose
16 our clients as soon as next week. They wanted
17 to depose them this week. It's a manifest
18 injustice for our clients to have to be deposed
19 while Mr. Epstein's deposition is still open;
20 he's refused to answer all those questions.

21 We have propounded written discovery on
22 Mr. Epstein, Request for Admissions, Request to
23 Produce, Interrogatories. He's refused to
24 answer every single one of those, Your Honor.
25 It's a manifest injustice that we would have our

ESQUIRE CORPORATE SERVICES
888.486.4044

Page 8

1 Fifth Amendment privilege, and we dealt with
2 that - Mr. Kuvin, I think, was the plaintiff
3 attorney in that particular case - and I believe
4 I ruled that, under the circumstances of Mr.
5 Epstein's agreement at the time with the federal
6 government, he would have had the right to
7 invoke his Fifth Amendment right.

8 Now, where is that at this juncture in
9 terms of that federal agreement?

10 MR. BERGER: Judge, I don't understand how
11 the Court could have reached that conclusion.
12 Judge, this is a sealed envelope that is in
13 front of the criminal division of this court.
14 This contains the federal agreement, it is under
15 seal. I don't understand how it was proffered
16 to you because it's under seal by the criminal
17 division of this court.

18 I might add that it was illegally and
19 improperly sealed. It was done in violation of
20 all of the rules of judicial administration, and
21 we have a hearing before Judge Colbath to unseal
22 it, but Mr. Epstein faces no criminal charges
23 whatsoever.

24 MR. CRITTON: Just note my objection. I
25 think he's completely off base, I think -- Well,

ESQUIRE CORPORATE SERVICES
888.486.4044

Page 7

1 clients deposed while those issues of the
2 validity of his refusals to answer have not been
3 addressed.

4 THE COURT: Let's talk about this for a
5 minute. Let's simplify the issue as far as
6 chronology or protocols of a deposition.

7 Typically, in the most simplest of cases,
8 which I understand this is not, but let's talk
9 about an auto accident and it's a contested
10 liability case, the burden of proof initially is
11 on the Plaintiff with regard to the allegations
12 that are made, and so as a result - and the same
13 thing typically with experts in accident
14 reconstruction-type of battle, let's say - I
15 will require the Plaintiff to be deposed first
16 because they have the burden of proof, and
17 typically the Defendant does not have to prove
18 anything, so I'm not really terribly concerned
19 about order of depositions unless they come
20 before me. If it's not an issue, better for me,
21 I don't have to worry about it.

22 But if I'm not mistaken, there was at
23 least one of the cases that came before me
24 before they were all transferred into this
25 division and we dealt at some issue with the

ESQUIRE CORPORATE SERVICES
888.486.4044

Page 9

1 I'll sit down.

2 THE COURT: That's all right, just one at
3 a time. I don't understand why both of you have
4 to stand.

5 MR. BERGER: And this is a non-prosecution
6 agreement, it's a sealed agreement.

7 THE COURT: Well, I understand --

8 MR. BERGER: I don't understand how it was
9 discussed in front of you, and then there was a
10 sealed addendum to the non-prosecution
11 agreement.

12 THE COURT: It wasn't discussed in terms
13 of its -- Well, there was some discussion as far
14 as its terms were concerned, but nothing
15 personal to any of the alleged victims here.

16 MR. BERGER: Then it seems impossible for
17 there to have been an evaluation of whether he
18 was properly invoking his Fifth Amendment rights
19 if the substance of this agreement; that is, a
20 secret agreement between Mr. Epstein, the State
21 Attorney in this County, and the Federal U.S.
22 District Attorney.

23 THE COURT: Well, to my recollection - and
24 it was done at an 8:45, so we didn't have the
25 chance to fully explore the matter, but it was

ESQUIRE CORPORATE SERVICES
888.486.4044

Page 10

1 done in a very efficient fashion, I can assure
2 you - I don't recall Mr. Kuvin being critical of
3 the sealing of the agreement. I don't recall
4 him being necessarily, tremendously adamant
5 about the situation as it stood at that time,
6 and this is going back now probably 30 or 45
7 days, so I don't know if anything has changed.

8 But clearly, though, we do have to resolve
9 that threshold issue, and I'm certainly not
10 averse - particularly where I believe that case
11 is already settled - I'm not averse at all to
12 having a hearing on that issue instead of
13 respectfully being critical of Judge Colbath
14 being critical of me --

15 MR. BERGER: Judge Colbath didn't enter
16 the order, judge.

17 THE COURT: Well, whoever it was, being
18 critical of the judge in the criminal division
19 being critical of me when, frankly, you may not
20 know the entire facts and you may not be
21 apprised of the Defense's argument and --

22 MR. BERGER: I read the plea colloquy,
23 Your Honor. It's all in the plea colloquy, it's
24 in the record. Maybe that's why Mr. Kuvin's
25 client did not - or maybe that's why my client

ESQUIRE CORPORATE SERVICES
888.486.4044

Page 11

1 did not retain Mr. Kuvin but retained me and my
2 firm.

3 We have our own case, Your Honor. I was
4 not privy and I did not have an opportunity to
5 participate in Mr. Kuvin's argument.

6 THE COURT: And that's precisely why I --

7 MR. BERGER: And we have --

8 THE COURT: Excuse me for a moment,
9 please, that's precisely why I'm suggesting to
10 you that I am willing to revisit the issue, but
11 why don't we go ahead and move on to the
12 substantive --

13 MR. BERGER: Okay.

14 THE COURT: The substantive issue right
15 now, if I'm understanding correctly, is trying
16 to determine the protocol as far as the
17 depositions are going to take place.

18 MR. BERGER: There's a motion to compel
19 the continuation of his deposition set in front
20 of you on June 8th.

21 THE COURT: But what I'm trying to get to,
22 and perhaps I'm not making myself terribly
23 clear, is that to compel him to sit there and
24 essentially invoke his Fifth Amendment rights
25 without having a full hearing on whether that

ESQUIRE CORPORATE SERVICES
888.486.4044

Page 12

1 invocation is appropriate, to me, from your own
2 statements here and in this mini blowup, which
3 is significantly and seriously testing my
4 eyesight even with glasses --

5 MR. BERGER: May I approach with a copy of
6 it?

7 THE COURT: Sure -- is probably better
8 off, as I said, having the hearing on the Fifth
9 Amendment privilege as opposed to worrying about
10 whether or not his deposition should or should
11 not go forward in its current context and in the
12 current fashion that it's already begun.

13 MR. BERGER: Judge, the case law that we
14 read said that you have to take the deposition
15 and ask specific questions. He invokes it with
16 regard to specific questions and those are
17 brought in front of the Court, not a question in
18 a vacuum, that's how we read the cases, that's
19 why we proceeded the way we did.

20 THE COURT: And you may be right. We'll
21 hear that hearing. I'm just trying to make a
22 recommendation that seems to make practical
23 sense to me more so than perhaps being familiar
24 with the specific cases --

25 MR. BERGER: We --

ESQUIRE CORPORATE SERVICES
888.486.4044

Page 13

1 THE COURT: -- and the matter --

2 MR. BERGER: We --

3 THE COURT: -- which the Court may
4 proceed.

5 MR. BERGER: We gave great consideration
6 as to how that issue should be brought in front
7 of you, and our decision was that the questions
8 have to be asked and objected to individually,
9 and that's how we proceeded - without objection,
10 really, in principal from the opposing side.
11 They were prepared to sit there for two days,
12 but they terminated the deposition early, and
13 that's set for June 8th.

14 So it's manifestly unjust for our clients,
15 we believe, to have their depositions taken
16 while these issues remain pending.

17 Moving on to the substance of the
18 questions themselves and whether they're
19 relevant, probative, et cetera, Your Honor, the
20 questions that we're objecting to have to do
21 with consensual sexual activities of our
22 clients.

23 Judge, I would like to analogize it to
24 this: If this were a car accident - using your
25 example, Your Honor - and the Plaintiff was

ESQUIRE CORPORATE SERVICES
888.486.4044

Page 14

1 claiming either physical or mental injuries as a
2 result of the car accident, it would definitely
3 be relevant to find out how many accidents she's
4 had in the past, the nature of those accidents,
5 and what type of injuries she suffered as a
6 result of those accidents, but it would not be
7 relevant and it would not be probative to find
8 out how and when she drove her car everyday from
9 the day she was 10 years old or whenever she
10 could drive.

11 In other words, the driving of the car
12 successfully and normally in the normal course
13 of her daily affairs is irrelevant to either the
14 liability issue in the auto case or the damages
15 issue.

16 Likewise, it's completely relevant for the
17 Defendant to ask each of our clients: Have you
18 ever been raped before? Have you ever had
19 forcibly a man insert his fingers in your
20 vagina? Have you ever forcibly been required to
21 give oral sex to a man? Those are legitimate
22 questions, but --

23 THE COURT: Let me ask you something,
24 because you talk about normalcy, and I would
25 agree if we're dealing with adults how they

ESQUIRE CORPORATE SERVICES
888.486.4044

Page 16

1 primary targets of such discovery to disclose
2 their entire sexual and reproductive histories
3 whenever they claim that they have sustained
4 psychiatric problems or a traumatic event that
5 is the subject of the lawsuit."

6 Below that, "There's no logical
7 correlation between a victim's willingness to
8 have engaged in sexual activities with others
9 and a victim's claim that he or she did not
10 consent to the sexual activity that is the
11 subject of the current proceedings."

12 The Mendez case, "No evidence was
13 presented" - this is when I said there's been no
14 showing - "by any mental health professional
15 that such evidence; that is, other sexual
16 activity by the plaintiff, would be relevant and
17 necessary for a determination of the cause of
18 the plaintiff's emotional distress. It's based
19 solely on the speculative presumption that
20 infidelity may lead to emotional distress.
21 Nowhere have defendants demonstrated factual
22 support for this presumption."

23 So the consensual sexual activity of the
24 plaintiffs with other men is completely
25 analogous to the normal driving of the plaintiff

ESQUIRE CORPORATE SERVICES
888.486.4044

Page 15

1 drive their car arguably may not be relevant or
2 at least lead to the discovery of admissible
3 evidence, but when we're dealing with minors,
4 are you suggesting to me that there's ever
5 normalcy with regard to sexual activity, and
6 should the Court simply put aside what a
7 complainant in a case like this suggests is
8 normal if she has engaged in sexual activity at
9 10 years of age?

10 MR. BERGER: I think it's completely
11 appropriate for the Court to allow only
12 questioning with regard to forcible and
13 nonconsensual sexual activities -- Let me back
14 up a minute. If it's with an adult, yes,
15 perhaps that questioning is proper. We're
16 talking about adult and minor sexual activities,
17 but not minor and minor, Your Honor, and
18 certainly not -- I think our girls are 20 years
19 old, our young ladies, and not even normal
20 consensual or consensual sexual activity now.

21 We're asking that this Court agree with
22 the Court - and this is on the second page of my
23 display here - Judge, in a case called D.S. The
24 Court said that, "The law should not force
25 plaintiffs, particularly women, who will be the

ESQUIRE CORPORATE SERVICES
888.486.4044

Page 17

1 in my hypothetical case and, of course, the mere
2 questioning of somebody about that is a
3 traumatic experience itself to ask them to
4 undergo that.

5 These Plaintiffs should not be robbed of
6 their dignity and their Constitutional rights
7 simply because they have sued this Defendant, so
8 there's no relevancy to this, to this type of
9 questioning, and it would not lead to admissible
10 evidence. Our clients have --

11 THE COURT: I'll give you a couple minutes
12 to wrap up, please.

13 MR. BERGER: -- State and Constitutional
14 rights. There's no probative value, or rather,
15 the probative value is outweighed by the
16 prejudice.

17 Judge, the last point is there's a
18 tremendous problem with third parties' rights,
19 and we've cited --

20 THE COURT: I'm familiar.

21 MR. BERGER: -- those cases with regard to
22 that.

23 Thank you, Judge.

24 THE COURT: Thank you, Mr. Berger.

25 MR. CRITTON: Good morning, Your Honor.

ESQUIRE CORPORATE SERVICES
888.486.4044

Page 18

1 Judge, as you know, I represent Mr.
2 Epstein. Let me just take it in the order, the
3 issues associated with the termination or the
4 adjournment of Mr. Epstein's deposition, Mr.
5 Burman was there, along with Jack Goldberger,
6 his criminal attorney. Although it wasn't said,
7 he didn't refuse to answer, he refused based on
8 the Fifth Amendment.

9 The Court was right with regard to the
10 stay issue, the entire stay issue that came in
11 front of you there. I disagree with Mr.
12 Berger's assessment with regard to the
13 non-prosecution agreement and what happened.

14 If the Court will also recall, the NPA is
15 under, basically, a freeze order. Mr. Edwards,
16 on behalf of two of his Jane Does, tried to get
17 that order so it would become public. Judge
18 Marra said, no, and they keep trying and trying
19 and trying, but that's another issue. I did
20 raise that with you, and I believe Mr. Kuvin was
21 aware at the time.

22 We do have a motion to stay, I believe
23 that's going to be heard in June, and I will
24 provide you a copy of the transcript to see what
25 you did before, so with regard to that issue,

ESQUIRE CORPORATE SERVICES
888.486.4044

Page 20

1 the same person.

2 MR. CRITTON: Correct. L.M. is L.M., E.W.
3 is C.W. in that statement, and I don't think
4 Jane Doe was referenced in that statement.

5 THE COURT: Why is Jane Doe mentioned in
6 this motion? It says, "and Jane Doe in federal
7 court," because L.M. and Jane Doe are the same
8 person?

9 MR. BERGER: May I explain that?

10 MR. CRITTON: No.

11 THE COURT: Hold on.

12 MR. BERGER: We have three clients. One
13 is in federal court, Jane Doe. Mr. Critton
14 wants to take Jane Doe's deposition in these two
15 cases, E.W. and L.M., so she's in front of you
16 as a nonparty on a motion for protective order.

17 THE COURT: I see, but she is your client
18 in the federal court case.

19 MR. BERGER: Yes.

20 THE COURT: The motion for protective
21 order references her as a witness to the matters
22 involving E.W. and L.M.

23 MR. BERGER: Correct.

24 THE COURT: Thank you for that
25 clarification.

ESQUIRE CORPORATE SERVICES
888.486.4044

Page 19

1 that's going to be in front of you.

2 I think Mr. Berger was wrong, I think he
3 claimed the Fifth Amendment 200 out of 270
4 questions. He was no more going to answer the
5 question than they thought that there was some
6 great elucidation that the sky would open up,
7 so, therefore, we would like to be able to
8 proceed to take these depositions.

9 What's also important here is I haven't
10 asked one question to anybody yet in terms of
11 the deposition. What I did was, is I set
12 E.W. --

13 THE COURT: And E.W. is the same lady who
14 the transcript --

15 MR. CRITTON: Transcript has C.W. E.W.
16 and C.W. are the same person, L.M. is the same
17 person, and Jane Doe I think she's just
18 referenced as Jane Doe, although she has other
19 initials.

20 THE COURT: Well, the transcript that was
21 provided to the Court relative to this taped
22 statement says L.M. Is L.M. the named Plaintiff
23 at the top of this --

24 MR. CRITTON: Correct.

25 THE COURT: -- particular motion, that's

ESQUIRE CORPORATE SERVICES
888.486.4044

Page 21

1 Go right head.

2 MR. CRITTON: And they represent all three
3 of those individuals.

4 The depositions that were set were set
5 solely in the state court cases, and I think the
6 agreement, so I want to be clear so it's on
7 record is - one of the exhibits I attached was
8 an agreement between Mr. Edwards and I - I'm
9 going to take Jane Doe, E.W., and L.M. one time
10 as a witness and deal with specifically witness
11 questions, on a second occasion separate and
12 apart --

13 THE COURT: As a witness in a specific
14 case?

15 MR. CRITTON: No. I don't want -- And
16 maybe there was a misunderstanding.

17 THE COURT: Well, you're going to have to
18 set the deposition in a case.

19 MR. CRITTON: I will set, as an example,
20 Jane Doe's deposition in E.W. I will ask her,
21 Jane Doe, whatever questions in any case that's
22 applicable under those circumstances so I only
23 depose her one time as witness, and then we can
24 agree among ourselves that that deposition can
25 be used in all cases.

ESQUIRE CORPORATE SERVICES
888.486.4044

Page 22

1 I will take L.M.'s deposition say in E.W.
2 as a witness. I will agree that L.M.'s
3 deposition, we take it one time. I'll ask her
4 whatever questions I have in any case that I
5 have.

6 THE COURT: As a witness.

7 MR. CRITTON: Solely as a witness, and
8 then I'll subsequently come back and I will take
9 them one time as a plaintiff in their respective
10 cases.

11 THE COURT: That protocol has essentially
12 been agreed to, correct?

13 MR. BERGER: It's been agreed to, and what
14 Mr. Critton means is that he will take L.M., for
15 example, as a witness in all of the state cases,
16 whether it's our cases, Mr. Garcia's cases, and
17 all the others; is that correct?

18 THE COURT: All the cases that he's aware
19 of.

20 MR. CRITTON: I'm going to ask --

21 MR. BERGER: Not just the ones that we
22 represent.

23 MR. CRITTON: Correct, all cases, whether
24 they're in state or federal court. I'm going to
25 depose that lady one time as a witness from my

ESQUIRE CORPORATE SERVICES
888.486.4044

Page 24

1 MR. CRITTON: We reached an agreement with
2 regard to that. I'm happy to notice every one
3 of them. Without knowing what L.M. is going to
4 say, I have no idea whether she's involved in
5 some federals. I'll notice everybody in
6 federal.

7 The flip side of that is what Judge Marra
8 said in a consolidation order is you get to
9 depose Mr. Epstein one time, all right. Already
10 Mr. Epstein's been deposed by Sid Garcia in the
11 State, he's been set by in B.B., which is one of
12 your cases, by Mr. Kuvin and the State, and Mr.
13 Berger and Mr. Edwards have started his
14 deposition, so this is kind of like my
15 goose/gander issue.

16 If I'm going to be limited and it's based
17 on an agreement, then I would also like Mr.
18 Epstein not to be thrown up 50 times or 20 times
19 for deposition, and I'm not sure -- That's
20 really not in front of you right now.

21 THE COURT: Right.

22 MR. CRITTON: I raised it in my motion and
23 probably will raise it and touch on it at the
24 hearing on the 8th or whatever date it is.

25 THE COURT: That's fine. Let's go ahead

ESQUIRE CORPORATE SERVICES
888.486.4044

Page 23

1 perspective.

2 MR. BERGER: Agreed.

3 MR. EDWARDS: We're on the same page.

4 THE COURT: Very well. I'm going to leave
5 that to the attorneys' stipulation as
6 potentially or hopefully clarified on the
7 record.

8 I think it is incumbent, and I'm sure I
9 don't have to say this, but simply to make sure
10 the record is clear, that when you notice these
11 witnesses - or they probably should be noticed
12 through Counsel. I would hopefully have it
13 where it's a global agreement between all of the
14 state and federal court plaintiffs' counsels
15 that are involved in this so that we don't have
16 piecemeal agreements, that could create problems
17 in and of itself, but I trust that all of the
18 cases before Judge Marra, all the cases that are
19 before me in state court - those in front of
20 Judge Marra, of course, are in federal court -
21 so we're going to be working under this omnibus
22 order, for lack of a better term, that hopefully
23 will be agreed to by all of plaintiffs counsels
24 involved because, if not, we're going to run
25 into difficulties with others.

ESQUIRE CORPORATE SERVICES
888.486.4044

Page 25

1 and -- I think right now, as I said before, I
2 really think that at this juncture to deal with
3 Mr. Epstein's deposition would be premature
4 because, number one, I don't have the transcript
5 in front of me, number two, I don't have a
6 detailed motion setting forth exactly what and
7 why his testimony is needed prior to any of the
8 women being deposed, so I would like to move on
9 from that. I would like to get into the
10 substantive issues relative to discovery.

11 I will say right now for the record my
12 ruling on the deposition protocol is going to be
13 this: I have no problem and I will allow the
14 Plaintiffs and/or witnesses to be deposed prior
15 to the presumption or conclusion of Mr.
16 Epstein's deposition in its most basic form and
17 in light of the broad discretion that the Court
18 has relative to discovery.

19 I am not going to treat this case any
20 differently than I would any other case where
21 discovery issues become problematic and are
22 raised before the Court. Again, not that I do
23 not understand the delicate nature of these
24 cases and the issues that are germane to this
25 case that are different than the generic case,

ESQUIRE CORPORATE SERVICES
888.486.4044

Page 26

1 but at the same time, simply as it concerns the
2 protocol relative to scheduling the depositions,
3 I don't think that that needs to be deviated
4 from and, therefore, I am not going to do that.

5 So my ruling is that on the issue of
6 essentially whether Epstein's deposition has to
7 be concluded prior to the taking of the
8 Plaintiffs' depositions, either as Plaintiffs or
9 as witnesses, that aspect of the motion is
10 respectfully denied.

11 Let's move on now to the substantive
12 issues relative to discovery of prior sexual
13 activity or current sexual activity of the
14 Plaintiff complainants.

15 MR. CRITTON: As the Court is aware, this
16 is a civil case for damages. Mr. Epstein has a
17 right irrespective of his - certainly has a
18 right to claim his Fifth Amendment privilege, he
19 also has constitutional due process rights for a
20 full and fair hearing in order to defend him.

21 What the Plaintiffs want to do in this
22 instance, which are L.M. and E.W., which are in
23 front of you, what they want to do is they want
24 to restrict the testimony that comes in about
25 them.

ESQUIRE CORPORATE SERVICES
888.486.4044

Page 28

1 admission more than 100 times. In her statement
2 or in her - she says, "I brought over 50 girls
3 there." E.W. brought girls and she was there on
4 multiple, tens upon tens of occasions. Jane Doe
5 was there on multiple occasions.

6 It's important to know these young ladies'
7 prior sexual history, whether it's consensual,
8 whether it's rape, whether it's molestation by a
9 family member, by an older person, by even a
10 fellow minor under the circumstances, maybe
11 another person of the same sex, you know, what
12 were this individual's experiences, what were
13 their experiences with their families, did she
14 -- Again, I've seen a lot of records in this
15 case from other individuals, it's not just these
16 two, and I attached some that talked about rape,
17 talk about molestation. I've seen records that
18 deal with where the parents had sex with other
19 individuals in front of these young ladies.
20 Jane Doe in this instance claims prior traumatic
21 stress disorder. From what? I don't know.

22 It's relevant, it's material, we're
23 entitled to get that type of information.
24 Again, we're not dealing with admissibility at
25 this point, what we're dealing with is: Are we

ESQUIRE CORPORATE SERVICES
888.486.4044

Page 27

1 By their own testimony, these young ladies
2 either were or currently are prostitutes,
3 they're strippers that have worked at Flash
4 Dance, Platinum Gold, Spearmint Rhino, all adult
5 male clubs. My guess is they probably worked in
6 the champagne room, they prostituted themselves,
7 and they've also brought, by their own testimony
8 and by their own - at least certainly by L.M.'s
9 statement, she brought 50 other girls to Mr.
10 Epstein's home.

11 They are claiming various counts, but
12 included within the count, significant,
13 intentional infliction of emotional distress.
14 Intentional infliction of emotional distress,
15 based on most of the cases that are read, Your
16 Honor, deal with some outrageous act that occurs
17 on one occasion with that person, and then, as
18 you know, it's a very high standard to prove
19 intentional infliction of emotional distress,
20 but it's that one event that's so outrageous,
21 that's so inflamed that it's beyond the
22 conscience of all reasonableness of really the
23 community or anyone who would look at it.

24 All of these ladies, including L.M. - L.M.
25 came to Mr. Epstein's house, by her own,

ESQUIRE CORPORATE SERVICES
888.486.4044

Page 29

1 entitled to get the information?

2 Did Mr. Epstein cause these outrageous
3 damages or these horrific damages that they're
4 claiming, and, again, emotional distress under
5 psychological trauma, mental anguish,
6 humiliation, embarrassment, loss of self esteem,
7 loss of dignity, invasion of their privacy, then
8 they talk about loss of income, a loss of
9 capacity to earn income in the future, a loss of
10 capacity to enjoy life.

11 What the Court's going to see over the
12 next couple of weeks as we bring motions to
13 compel with regard to interrogatories, they
14 won't tell me where they live, they won't give
15 the names and addresses of parents and their
16 siblings - they're seeking millions of dollars -
17 they won't give me tax returns, all right.

18 They don't want to provide any of that
19 information. What they want to do is this:
20 They want to control, in this instance, exactly
21 what information comes in front of this Court,
22 exactly what information comes in front of the
23 Fact Finder, so that they can dump it all onto
24 Mr. Epstein.

25 We believe that the evidence in this case
ESQUIRE CORPORATE SERVICES
888.486.4044

Page 30

1 is going to show that these young girls, even
 2 prior to Mr. Epstein, had very unusual sex
 3 lives, had very unusual sex experiences, which
 4 will go to what did Mr. Epstein do under the
 5 circumstances or what did they claim he did
 6 under the circumstances that caused them
 7 damages; that is, what did Mr. Epstein do,
 8 separate and apart maybe from an 18-year-old
 9 person or a 15-year-old person who may have used
 10 an object or a 12-year-old person when they were
 11 10 or 11 or 12 or a 40-year-old person like Mr.
 12 Epstein, separate and apart from Mr. Epstein,
 13 may have done with them at some point in time at
 14 an age from 10 up?

15 If they had no sexual experience from age
 16 10 to 14, which in their complaints is the first
 17 time they allege that they went to Mr. Epstein's
 18 house, it's going to be an easy question to
 19 answer, "none," that's going to end the inquiry.
 20 I don't think that's true, but that's going to
 21 end the inquiry.

22 We will not be in a position to defend
 23 this case and say, "Okay, you say that Mr.
 24 Epstein caused all these problems, well, how
 25 about John Smith who you had sex with when you

ESQUIRE CORPORATE SERVICES
 888.486.4044

Page 31

1 were 12? How old was Mr. Smith?"

2 "Well, he was 20 years old."

3 "What did you do?"

4 "We did X, Y, and Z."

5 "Now, did you find that horrific? Did you
 6 find that unusual? What was different about it
 7 under the circumstances than the circumstances
 8 that you had with Mr. Epstein?"

9 This is a very different case. This is
 10 not your typical automobile accident case, and
 11 if someone was claiming psychological damages as
 12 a result of an automobile accident you would
 13 often say, "Okay, they have pain and suffering,
 14 but they're really not claiming mental anguish,"
 15 so the fact that they may have been treated
 16 20 years ago or even 10 years ago for depression
 17 because they had the death of a child, you would
 18 say, "Wait a minute, death of a child, don't
 19 think it's relevant to what the person's problem
 20 is right now, or maybe I'll let you look at it
 21 in camera and I, as the judge, will determine
 22 whether it's relevant under the circumstances."

23 This is a sex case and sex is a big issue
 24 in here, and what's usual, what's unusual? I
 25 guess it depends on the person or the couple or

ESQUIRE CORPORATE SERVICES
 888.486.4044

Page 32

1 the circumstances, as to what may be typical or
 2 usual. We may have six people in the box and
 3 what may be typical sex for the people in this
 4 room may be very different from them. They may
 5 think that we're a bunch of prudes or they may
 6 think that this is usual or it's unusual.

7 Each of these girls has their own
 8 experiences, they're strippers, they're
 9 prostitutes by their own admission. They don't
 10 want to give information. They don't want to
 11 talk even about their income.

12 Well, wait a minute now. My guess is --
 13 Now, again, I certainly won't speak from
 14 personal experiences, but I've heard at strip
 15 clubs that men actually pay \$20 or \$30 maybe for
 16 a lap dance, and I've heard that some of these
 17 strippers and people who work at these clubs
 18 similar to E.W. and L.M. and S.R., they have
 19 something called a champagne room and that even
 20 costs more money and even more things happen
 21 back there.

22 Again, that's what their livelihood is,
 23 that may have been their prior experience, I
 24 don't know. I'm certainly not suggesting that
 25 their lifestyle is any worse than we as lawyers;

ESQUIRE CORPORATE SERVICES
 888.486.4044

Page 33

1 that's their lifestyle, they've chosen it. But
 2 they're bringing a case seeking millions of
 3 dollars under the circumstances, they want
 4 millions of dollars, but they want the jury or
 5 the Fact Finder to see them through rose colored
 6 glasses.

7 I would say one of the best examples is
 8 L.M.'s statement. She basically says, "You
 9 know, I love Jeffrey, he was good to us. I told
 10 every girl I brought, including E.W., you have
 11 to do a topless massage and maybe the more you
 12 do, the more money you'll get."

13 Okay, so what caused E.W. to say, "Okay,
 14 I'll do it"? Did she decide right then, did she
 15 decide when she got in the car, did she decide -
 16 because she's been having to make decisions
 17 every place along the way, when she got in Mr.
 18 Epstein's house, when she went up the stairs, as
 19 she claims in the complaint when she saw Mr.
 20 Epstein and he had a towel around him? She
 21 could have said at any of those times, "You know
 22 what, this isn't for me." So what in her
 23 background made it okay under the circumstances
 24 or that she felt so comfortable?

25 If it was this outrageous act, this
 ESQUIRE CORPORATE SERVICES
 888.486.4044

Page 34

1 outrageous act with severe, emotional damages,
2 which is the crux of an intentional infliction
3 of emotional distress, it was so severe, oh, but
4 I went back 99 more times, maybe 100 times, or I
5 went back 20 more times or I went back 10 more
6 times under the circumstances.

7 What we're looking for is to be able to
8 ask - again, number one, I don't have the time,
9 but, secondly, I set it forth in the motion, but
10 we're in the discovery stage, we're only in the
11 discovery stage, not the admissibility stage.

12 THE COURT: Two minutes to wrap up,
13 please.

14 MR. CRITTON: And the Ballast case is
15 probably really a good description.

16 This same issue came in front of Judge
17 Garrison, it's Question 18 with A.C., it was the
18 identical question that said: List separately
19 the names, addresses, and phone numbers of all
20 males with whom you have had sexual activity
21 since the age of 10, and A.C. set forth -- You
22 don't have it, but --

23 THE COURT: And that's the amazing thing,
24 I've got to tell you - and I won't take your
25 time up - but Wednesday afternoon I had six

ESQUIRE CORPORATE SERVICES
888.486.4044

Page 36

1 THE COURT: Thanks. Is that the same?

2 MR. CRITTON: This is the Garrison case,
3 it was Question 18, which the Judge directed --

4 MR. BERGER: Judge, our objection is to
5 Interrogatory 19, which is quoted in our motion.

6 MR. CRITTON: It's the same.

7 THE COURT: I know it's quoted, don't get
8 me wrong, but I like to get the context of the
9 entire discovery before I take questions sort of
10 out of sequence, but this doesn't have a
11 question 19, by the way.

12 This question says, quote - and, Mr.
13 Berger, follow along if this is the same
14 question No. 18 of the A.C. case - "list
15 separately the names, addresses, and phone
16 numbers of all males with whom you have had
17 sexual activities since the age of 10, by year,
18 up through your current age. Describe the
19 nature of sexual activity, the dates, and
20 whether you received money or consideration from
21 the person," and is that the same question?

22 MR. BERGER: Yes.

23 THE COURT: So that was simply 18 in this,
24 19 in the one that you are objecting to.

25 Now, are there any other questions, Mr.

ESQUIRE CORPORATE SERVICES
888.486.4044

Page 35

1 motions for summary judgment set in a half day
2 set, and the incredible thing that happens is I
3 get the response to the Movant's motion for
4 Summary Judgment, a Reply to the Response to the
5 Motion for Summary Judgment, but oftentimes I
6 don't get the motion. In other words, it's
7 stuck, in that case, now a 39-volume file.

8 So, you know, and it's the same thing
9 here, I don't really have the discovery in my
10 hands to know precisely what's being asked. I
11 know there are snippets that have been
12 referenced in both sides' respective memoranda,
13 but I don't have the actual discovery in front
14 of me, so that would be helpful.

15 MR. CRITTON: May I approach?

16 THE COURT: But it's not unusual, even
17 among the best lawyers in the area, that it
18 seems to be an interesting dynamic though that
19 you all argue so passionately and at length in
20 your responses and generically how this stuff is
21 important, yet the actual questions or the
22 actual production requests are not included, and
23 you guys are not the only ones, it happens with
24 frequency.

25 MR. CRITTON: May I approach?

ESQUIRE CORPORATE SERVICES
888.486.4044

Page 37

1 Berger, that you are objecting to, because,
2 again, you dealt with it globally, and while you
3 dealt with it very well globally, I want to know
4 what the specific questions are.

5 MR. BERGER: Well, there are objections
6 that are the subject of motions to compel that
7 the Defense filed, so there are additional --

8 THE COURT: Which other ones are they?

9 MR. BERGER: Now we get into the topic of
10 hearings that are coming up.

11 THE COURT: Well, I don't want to get into
12 topics of hearings that are coming up. I just
13 want to know: Are there specific questions
14 raised that are on the table that I need to rule
15 on?

16 MR. BERGER: That is the specific
17 question --

18 THE COURT: That is the specific question.

19 MR. BERGER: -- of most importance to us.

20 THE COURT: All right. Very well. That's
21 what I'm interested in.

22 MR. BERGER: That's why we quoted it.

23 THE COURT: And I'm not taking issue with
24 that, it's just that I didn't actually see it in
25 context with the rest of the interrogatories, so

ESQUIRE CORPORATE SERVICES
888.486.4044

Page 38

Page 40

1 it leads me with a little bit of a handicap, I
2 hope you can appreciate that.

3 MR. CRITTON: Judge Lewis also dealt with
4 this issue; I attached a copy of her order.

5 THE COURT: I read that also.

6 MR. CRITTON: And her transcript dealt
7 specifically with the same issue.

8 In the Ballast case that we cited, I don't
9 know whether the Court had a chance to look at
10 it --

11 THE COURT: I have.

12 MR. CRITTON: -- again, it was a claim
13 among other claims, but an intentional
14 infliction of emotional distress.

15 THE COURT: Is there a statutory claim
16 similar to the Ballast claim in this case?

17 MR. BERGER: Yes.

18 MR. CRITTON: Yes.

19 MR. BERGER: Sorry.

20 THE COURT: In the Ballast case, there are
21 other claims that had been made, as you
22 mentioned, one being the intentional infliction
23 of emotional distress.

24 MR. CRITTON: And battery, and where I
25 quoted Paragraph 26 with the litany of damages

ESQUIRE CORPORATE SERVICES
888.486.4044

1 So what happened to these ladies, these
2 females beforehand, is certainly relevant, what
3 their relationship is now, because they're
4 saying severe and emotional distress. Well, how
5 do you get along with your boyfriends or various
6 male friends that you've had, whether they're
7 economic friends or whether they're boyfriends?
8 Do you still have normal sexual relationships,
9 do you get along fine? To depose those
10 individuals and say, Okay, you were L.M.'s
11 boyfriend for six months, did she ever mention
12 Mr. Epstein, what were the circumstances? What
13 did you do?

14 Well, we went to movies, you know, we went
15 out boating, you know, I would meet her at the
16 club because she was working at Flash Dance at
17 the time, she said she would --

18 THE COURT: Okay. You've got to wrap up,
19 please. Thank you, Mr. Critton.

20 Mr. Berger, I'll give you 3 minutes for
21 rebuttal.

22 MR. BERGER: On the Ballast case I would
23 point out that --

24 THE COURT: You know that both sides were
25 well advised and, in fact, mentioned in the

ESQUIRE CORPORATE SERVICES
888.486.4044

Page 39

Page 41

1 that are being claimed, that's essentially the
2 same damage claim that's being made in all three
3 counts in both L.M., E.W., and by Jane Doe, at
4 least in federal court.

5 The Ballast case, of course, as the Court
6 noted and the Court said, Fifth District said,
7 Look, if that was your only claim, the 769.09
8 claim, we might look at this differently, but
9 because you asked for intentional infliction,
10 you know, they require a listing of the names,
11 telephone numbers, rates of pay, they talked
12 about how has this affected you both before and
13 after, and that's another party to -- Let's
14 assume they have boyfriends right now.

15 As you saw from L.M.'s statement, E.W.'s
16 boyfriend's father is like her baby's father, so
17 many of these individuals are well connected,
18 but they talk about what's your total income,
19 request for production, give us your special
20 list of customers - now these are questions from
21 the Ballast case, you know, in terms of
22 questions that the Court actually dealt with -
23 give us your list of customers, your special
24 customer list or your sugar daddy list, so the
25 names and addresses are important.

ESQUIRE CORPORATE SERVICES
888.486.4044

1 notice of hearing that this was a 30-minute
2 hearing. I am giving you some extra time, so I
3 don't want to be suggestive that I'm rushing
4 anybody in terms of the length of time of the
5 hearing. Go ahead.

6 MR. BERGER: Thank you, Your Honor.

7 I would point out that the Ballast case,
8 as far as I read the questions, and I tried to
9 read them very carefully, on Page 3 of 9 and on
10 Page 4 of 9 of the decision, those questions
11 relate specifically to prostitution. They do
12 not relate to consensual sexual activities with
13 other male partners. They deal specifically
14 with prostitution.

15 THE COURT: Well, Interrogatory 22 on this
16 Page 2 of the opinion states, quote, "state with
17 specificity the manner in which the acts
18 described in the complaint that materially
19 affected how you interacted with your husband,
20 boyfriend, fiancé, or any other individual of
21 the opposite sex."

22 MR. BERGER: I wouldn't even object to
23 that question.

24 THE COURT: Pardon me?

25 MR. BERGER: I wouldn't object to that
ESQUIRE CORPORATE SERVICES
888.486.4044

<p style="text-align: right;">Page 42</p> <p>1 question.</p> <p>2 THE COURT: You would.</p> <p>3 MR. BERGER: No, I wouldn't. He can ask</p> <p>4 our clients what Mr. Epstein did to them, if</p> <p>5 sexually molesting them affects their</p> <p>6 relationship, we're not objecting to that type</p> <p>7 of question.</p> <p>8 Also Ballast does not deal with third</p> <p>9 party rights, which the Court indicated you're</p> <p>10 familiar with that issue, so I didn't go on</p> <p>11 about it. There are significant cases that deal</p> <p>12 with third party rights and protecting them.</p> <p>13 You know, Judge, I can't think of anything</p> <p>14 more outrageous as acts than sexually molesting</p> <p>15 13 and 14-year-old girls repeatedly, dozens and</p> <p>16 dozens of times, and so to deal lightly, which</p> <p>17 is the tenor of Defense Counsel's approach, I</p> <p>18 think is improper.</p> <p>19 I would just finally point out, Your</p> <p>20 Honor, that in the course of the deposition of</p> <p>21 Mr. Epstein -- Let me back up.</p> <p>22 Judge, we're dealing I think with, and I</p> <p>23 think we need to be specific, as you pointed</p> <p>24 out, the consensual sexual activity of these</p> <p>25 girls from the age of 10 is not relevant to</p> <p style="text-align: center;">ESQUIRE CORPORATE SERVICES 888.486.4044</p>	<p style="text-align: right;">Page 44</p> <p>1 being complained of by these Plaintiffs.</p> <p>2 Now, balanced with that is the obvious</p> <p>3 concerns for the Court in terms of trying to, on</p> <p>4 the one hand, not expose the alleged victims to</p> <p>5 unfettered invasions of their privacy, but at</p> <p>6 the same time recognize that the allegations</p> <p>7 here and the nature of the facts that have been</p> <p>8 developed thus far are quite different than what</p> <p>9 would be a rape case by a stranger, different</p> <p>10 from a sexual assault case on a one-time basis</p> <p>11 by a stranger or someone known to the victim.</p> <p>12 Here we have elements of prostitution that</p> <p>13 are ingrained in the facts of the case. While I</p> <p>14 understand the privacy nature of sexual</p> <p>15 activity, when we have cases like this - I think</p> <p>16 as Mr. Critton aptly pointed out, without trying</p> <p>17 to be disrespectful to the alleged victims -</p> <p>18 we're not necessarily dealing, as far as the</p> <p>19 information known to date, with what would</p> <p>20 otherwise be considered traditional or normal</p> <p>21 high school-aged women relative to the things</p> <p>22 that went on here as contended by L.M. in her</p> <p>23 statement.</p> <p>24 I mean, her statement, and it's not been</p> <p>25 sought to be stricken from the Court's</p> <p style="text-align: center;">ESQUIRE CORPORATE SERVICES 888.486.4044</p>
<p style="text-align: right;">Page 43</p> <p>1 either their emotional distress damages or to</p> <p>2 the liability issues. It's the same thing as</p> <p>3 the normal driving habits of a person getting in</p> <p>4 the car in that discovery, I want to just</p> <p>5 emphasize that point, and it's unfairly</p> <p>6 prejudicial even if it has any kind of probative</p> <p>7 value.</p> <p>8 This is a pure fishing expedition into</p> <p>9 people's lives. What women can bring cases of</p> <p>10 this nature and not be subjected to further</p> <p>11 trauma by the discovery process? The Court must</p> <p>12 be able to fashion some type of relief for these</p> <p>13 types of problems.</p> <p>14 Thank you, Judge.</p> <p>15 THE COURT: Thank you to both sides. I</p> <p>16 certainly appreciate your presentations and</p> <p>17 arguments.</p> <p>18 Obviously, as I earlier mentioned, these</p> <p>19 are sensitive issues, but several things that we</p> <p>20 have to keep in mind - I think Judge Lewis</p> <p>21 indicated in the transcript - that, first and</p> <p>22 foremost, these are claims that are being made</p> <p>23 by Plaintiffs, and the Plaintiff will have the</p> <p>24 burden of proof in this case to prove how these</p> <p>25 acts proximately caused the damages that are</p> <p style="text-align: center;">ESQUIRE CORPORATE SERVICES 888.486.4044</p>	<p style="text-align: right;">Page 45</p> <p>1 consideration, so I read it, it repeatedly says,</p> <p>2 quote, "Jeffrey is an awesome man," end quote.</p> <p>3 It got to the point where she was praising him</p> <p>4 with such regularity and extent that the</p> <p>5 detective finally asked her at the conclusion of</p> <p>6 a 58-page statement, "Are you in love with him</p> <p>7 at all?" That was the question that the</p> <p>8 detective after the accolades and praise that</p> <p>9 she was heaping on Mr. Epstein.</p> <p>10 She relates incidents where her boyfriend</p> <p>11 told her to continue to go over there and do</p> <p>12 these massages, just bring home the bacon; a</p> <p>13 scenario where she cared for Epstein so much</p> <p>14 based on not only the way he treated her in</p> <p>15 terms of food and drink at the home, and I'm not</p> <p>16 speaking about alcoholic beverages, she didn't</p> <p>17 mention that at all, but how awesome it was that</p> <p>18 when she had a baby Epstein sent over gifts and</p> <p>19 how special those gifts were to her, so we're</p> <p>20 not talking about what is typically involved in</p> <p>21 these rape shield cases.</p> <p>22 Again, I don't want this Court's responses</p> <p>23 simply based on reading this particular</p> <p>24 statement of one of the particular Plaintiffs</p> <p>25 involved in the motions here today to be seen as</p> <p style="text-align: center;">ESQUIRE CORPORATE SERVICES 888.486.4044</p>

Page 46

1 my simply glossing over the seriousness of the
2 events that transpired at this gentleman's home,
3 but I do have to consider both sides and each
4 side's rights here as a completely neutral
5 arbiter of a very sensitive case and
6 unfortunately a very high profile case as well,
7 but everyone that comes before this Court, and I
8 trust my colleagues as well, no matter what
9 court they sit, is going to be entitled to a
10 fair shake and a fair trial and entitled to the
11 responses and decisions made by a completely and
12 absolute neutral arbiter; anything less than
13 that would be inappropriate.

14 If I'm going to sit here and be overly
15 empathic to the allegations made by a plaintiff
16 in any type of case, or conversely, where a
17 defendant claims that those allegations are
18 absurd and unfounded and be empathic simply
19 based on those generic claims made typically by
20 counsel as opposed to the parties themselves at
21 these hearings, then I would not be doing the
22 community and the office that I hold the service
23 that I believe that they are entitled to.

24 So taking that balance in mind, I feel
25 compelled to follow the law that is set forth in

ESQUIRE CORPORATE SERVICES
888.486.4044

Page 47

1 the Ballast vs. Ruzzo case. For the record, the
2 citation is 703 So.2d. 1076, and that was a
3 decision of the Fifth District Court of Appeal,
4 and I will quote headnote 3, "had the
5 Petitioners brought their lawsuit against Ruzzo
6 and the Board Room only under Section 769.09,
7 evidence of Petitioner's past prostitution
8 including with the Board Room and their earnings
9 related to such activities may not have been
10 discoverable. However, the Petitioners filed a
11 multi-count complaint for compensatory and
12 punitive damages alleging numerous causes of
13 action against the Respondents. These other
14 causes carry no such protection from discovery.
15 Since the information sought by discovery may be
16 relevant or may lead to discovery of admissible
17 evidence of one or more of the other causes of
18 action or to determination of damages, we cannot
19 conclude that the trial court departed from the
20 essential requirement of law in granting this
21 discovery," and it refers to a case called Smith
22 vs. TIB Bank of the Keys, 687 So.2d. 895, a
23 Third District case, 1997, and that quotation
24 then from that case by the Fifth in the Ballast
25 case says "by alleging fraud as well as breach

ESQUIRE CORPORATE SERVICES
888.486.4044

Page 48

1 of contract, purchaser placed at issue her
2 reliance on vendor's assertions the veracity of
3 financial documents submitted to the vendor and
4 the state of her mental health, including memory
5 problems she was experiencing at the time of the
6 alleged tortious conduct; thus, deposition
7 questions concerning her state of mind were
8 relevant."

9 And here, again, the Court can't ignore
10 its own common sense when making these types of
11 decisions and can't rule in a vacuum, but has to
12 extend at least some common sense considerations
13 to these claims as well.

14 The nature of the allegations here and the
15 allegations do contain references to, in many of
16 these cases, multiple visits to this
17 individual's home; that is, Mr. Epstein's home,
18 by the very Plaintiffs who are claiming
19 psychological damage, mental anguish,
20 embarrassment, loss of dignity, psychological
21 trauma, an intentional infliction of emotional
22 distress, where the language contained in the
23 cases - I think the first case really speaks to
24 that at length where the cause of action was
25 delineated and discussed fully - I think goes

ESQUIRE CORPORATE SERVICES
888.486.4044

Page 49

1 back to the McCarson case and then its prodigy,
2 but to prove a claim for intentional infliction
3 of emotional distress, the word "outrageous"
4 comes to mind, in other words, the acts must be
5 so outrageous that it is beyond the bounds of
6 decent society, as I recollect, just from
7 memory.

8 When we're dealing with those kinds of
9 claims it is my opinion and the ruling of the
10 Court that, within the bounds of reasonableness,
11 the Defendant is entitled to the information
12 contained in Interrogatory 19.

13 Now, with regard to the John Doe issue
14 relative to partners or Jane Doe, whoever may be
15 involved, I will permit, as did Judge Lewis in
16 her analysis, anyone who is named to be able to
17 approach the Court and to have the opportunity
18 to protect their identity, so we will follow the
19 same directives as Judge Lewis did. I'm not
20 going to go through it at length here, it's
21 enclosed in the papers prepared by the
22 Defendant, and you all can set forth that type
23 of protection within the order, and I will
24 provide that same type of protection to any of
25 the individuals who are listed.

ESQUIRE CORPORATE SERVICES
888.486.4044

Page 50

1 Clearly the Rasmussen case is - the
2 primary distinction that I find there is that in
3 that case, there was no question that the
4 probative value, any probative value, was
5 greatly outweighed by the prejudice to any
6 patients in the blood donor area or any people
7 who donated blood, and the chilling effect it
8 would have had on the very necessity, communally
9 and throughout this world, of blood donations,
10 and the risk that the industry would have taken
11 had those names been identified.

12 On top of that, and I think without saying
13 so, in that opinion, at least as I recall it
14 having not read it in full, but noting the
15 citation and noting the quotations from the case
16 that was utilized, any damages that needed to be
17 dealt with and any proofs that needed to be
18 dealt with were well defined within the case
19 brought against the blood bank, so I think there
20 was also a relevance issue as well.

21 In other words, there was no real question
22 about the transmission aspect and that the blood
23 was tainted, and really was more of a collateral
24 matter as to who provided the blood, than it was
25 an issue of responsibility of the blood bank per

ESQUIRE CORPORATE SERVICES
888.486.4044

Page 51

1 se, and the names were not important even for
2 Fabre reasons, in my opinion, in that particular
3 case.

4 So I do think that this information is
5 relevant. I do think the information will go
6 not only to issues of proof regarding the
7 substantive legal matters that we've touched on;
8 that is, the causative action that we've spoken
9 about, but also and perhaps even most
10 importantly, they will go to these very serious
11 and significant and extensive psychological
12 damages that the Plaintiffs are claiming here.

13 I am well aware that when we're dealing
14 with sexual issues, and it's a taboo that this
15 society continues to hold over such issues, and
16 I fully recognize the privacy interest involved.
17 However, in these types of situations, sometimes
18 those types of taboos have to be, and to a
19 degree, subverted in the interest of justice,
20 the interest of fairness, and the interest that
21 both sides receive, as I mentioned earlier, a
22 fair consideration of their case.

23 I do temper my comments today with the
24 understanding as the Fifth District in the
25 Ballast case made clear, that discovery is far

ESQUIRE CORPORATE SERVICES
888.486.4044

Page 52

1 broader than admissibility. I'm not suggesting
2 at this juncture that any of this information
3 will necessarily be admissible, but, again, with
4 the broad discretion of the Court relative to
5 discovery matters and following the well
6 established law in Florida, that discovery is
7 far broader than admissibility, I am going to
8 require that the answer be provided to
9 Question 19 in the interrogatory set that have
10 been sent to the two Plaintiffs at issue in this
11 particular case.

12 Mr. Critton, will you kindly provide an
13 order? Well, I guess it's a motion for
14 protective order. I guess if you all have an
15 order that simply says that the motion for
16 protective order is denied for the reasons
17 stated on the record and the amended protective
18 order in E.W.'s case is denied for reasons
19 stated on the record, that will be fine.

20 MR. BERGER: Judge, I've just drafted - I
21 know Mr. Critton wants to comment about it - an
22 order that says "denied for reasons stated on
23 the record," and then I said "third-party
24 protection as in Judge Lewis's order submitted
25 by Defendant in his response."

ESQUIRE CORPORATE SERVICES
888.486.4044

Page 53

1 MR. CRITTON: I'm okay with that as long
2 as this is all on the record because you dealt
3 with a number of issues that won't be
4 necessarily in this order, but we'll both want a
5 copy of the transcript, so I can live with that,
6 Mr. Berger.

7 Can I ask one other question? Can we
8 submit a similar order? This was on E.W. today,
9 we have it at 4:30 next week, they have a
10 similar motion on L.M., can Counsel agree --

11 MR. BERGER: Can I talk to --

12 THE COURT: E.W. and L.M. were both
13 mentioned in this particular motion.

14 MR. BERGER: Correct, and L.M. has, who
15 has her own case, has an identical motion as a
16 party a week from today.

17 THE COURT: Well, again, unless there are
18 issues that would be significantly different
19 than those that we dealt with today, of course,
20 you can speak to her and find out, but the
21 ruling is not going to change, so I don't want
22 to necessarily waste anybody's time as it
23 concerns having to re-hear the same issues.

24 MR. BERGER: Again, I may reach that
25 conclusion, I just want an opportunity to talk

ESQUIRE CORPORATE SERVICES
888.486.4044

Page 54

1 to the client and talk to Mr. Critton, that's
2 all.

3 THE COURT: If that is the case, for
4 appellate purposes, the parties stipulate that
5 I'm not going to rehash my ruling, but it would
6 have the same applicability to L.M.

7 MR. CRITTON: Right. We would agree with
8 that. I will put that on the record.

9 THE COURT: Thank you.

10 MR. CRITTON: Can we put one other thing
11 on the record?

12 THE COURT: Sure.

13 MR. CRITTON: Judge Lewis's transcript,
14 the portion I put in, that portion that dealt
15 with the specific topic. May we supplement, by
16 agreement of counsel and certainly the Court,
17 the entire transcript of Judge Lewis?

18 THE COURT: Yes.

19 MR. CRITTON: We also have motions on 8:45
20 next week, we'll see if we can get those
21 resolved.

22 MR. BERGER: May I approach?

23 THE COURT: Yes.

24 Thanks, Mr. Berger. Nice to see you all.

25 (The hearing concluded at 9:30 a.m.)

ESQUIRE CORPORATE SERVICES
888.486.4044

Page 55

1 CERTIFICATE

2
3 STATE OF FLORIDA)
4 COUNTY OF BROWARD)
5

6
7 I, JENNIFER D. DiLORENZO, Shorthand
8 Reporter, certify that I was authorized to and did
9 stenographically report the foregoing proceedings and
10 that the transcript is a true and complete record of
11 my stenographic notes.

12
13 Dated this 22nd day of May, 2009.
14
15
16
17

18 JENNIFER D. DiLORENZO,
19 COURT REPORTER
20
21
22
23
24
25

ESQUIRE CORPORATE SERVICES
888.486.4044