

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 and
BRADLEY J. EDWARDS, individually,

Defendants/Counter-Plaintiffs.

**SUPPLEMENTAL RESPONSE TO PLAINTIFF/COUNTER-DEFENDANT JEFFREY
EPSTEIN'S MOTION FOR COURT TO DECLARE RELEVANCE AND NON-
PRIVILEGED NATURE OF DOCUMENTS, AND REQUEST FOR ADDITIONAL
LIMITED DISCOVERY, EVIDENTIARY HEARING AND APPOINTMENT OF
SPECIAL MASTER AND THE SUPPLEMENT TO THAT MOTION**

Counter-Plaintiff, Bradley J. Edwards, by and through undersigned counsel, hereby files this Supplemental Response to Plaintiff/Counter-Defendant Jeffrey Epstein's Motion for Court to Declare Relevance and Non-Privileged Nature of Documents, and Request for Additional Limited Discovery, Evidentiary Hearing and Appointment of Special Master ("Motion to Declare Relevance") and the Supplement to that motion, and as grounds therefore states:

INTRODUCTION

This Court has already determined that Epstein may not admit into evidence or otherwise refer to the privileged documents in question. This Court's decision was based upon the fact that Epstein and his counsel had possession of the materials for years, in violation of a federal court order, yet failed to timely list them as exhibits, in violation of multiple court orders and rulings. Epstein also failed to seek a determination before the close of discovery as to the privileged nature

of the documents, despite the fact that most of them were included on a privilege log filed in this Court in April 2012.

Not one to take no for an answer, Epstein is back yet another bite at this already well-chewed apple. Epstein has raised no new issues here which should support a different result than this Court has already ordered. To the contrary, the instant Motion was pending when this Court made the decision to strike Epstein's amended exhibit list which included the documents in question. This Court heard significant argument on the issue before making its extensive, thoughtful ruling. There is absolutely no reason for this Court to spend any more time than it already has considering this issue. Epstein's Motion to Declare Relevance must be denied.

RELEVANT FACTS

Although this Court is familiar with the issue raised here as it already heard argument and ruled on it, Edwards includes a recitation of the relevant facts to remind this Court why it struck the late filed exhibits, including the privileged materials identified in Edwards's 2012 privilege log.

The Discovery Orders Violated by Epstein

On July 20, 2017, this Court entered its Order Specially Setting Trial, which set the case for trial beginning December 5, 2017. In its Order, the Court required that the Pre-Trial Stipulation include “each party’s **numbered list of trial exhibits** with specific objections, if any, to schedules attached to the stipulation.” (emphasis added). The Court made clear that the parties would be “**strictly limited to exhibits . . . disclosed . . .** on the schedules attached to the Pre-Trial Stipulation . . . absent agreement specifically stated in the Pre-Trial Stipulation or order of the Court upon good cause shown.” (emphasis added). Thus, the Court’s July 20, 2017 Order limited the parties to only those trial exhibits that were specifically identified and disclosed on the Pre-Trial Stipulation.

In October and November 2017, the parties began exchanging exhibit lists and producing proposed exhibits in connection with the Court’s Order. Epstein’s Exhibit List listed as Exhibit #13, “miscellaneous,” the broadest catch-all provision possible: All documents produced by any party or non-party in this matter.

At the December 5, 2017 hearing, after continuing the trial until March at the request of Epstein, the Court instructed that any identified exhibits not previously produced must be provided to opposing counsel by no later than December 19, 2017. *See, e.g.*, (12/5/17 Tr. at 225-226). A copy of the transcript is attached at Exhibit A. The Court also cautioned that general “catch-all” exhibit categories would not be permitted and that, instead, the specific documents covered by such exhibits must be separately identified and produced. *See, e.g.*, (12/5/17 Tr. at 223- 225). The message to the parties was clear: trial by ambush would not be permitted.¹

On December 19, 2017, Epstein produced copies of certain listed exhibits pursuant to that directive. Epstein’s Exhibit #13 contained twenty-seven (27) RRA emails. None of these emails were listed on Edwards’s five (5) year old privilege log, discussed further below.

On December 22, 2017, the parties filed the Pre-Trial Stipulation. Epstein’s Exhibit List was attached to the Pre-Trial Stipulation. A copy of the Exhibit List Stipulation is attached as Exhibit B.

Epstein’s Exhibit #13 was comprised of the 27 emails that had been specifically identified and produced. Pursuant to the Court’s December 5, 2017 ruling and the December 19, 2017 exhibit

¹ The Court’s oral ruling was memorialized on January 16, 2018, when the Court entered its Order on Epstein’s Revised Omnibus Motion in Limine Section B (Edwards’ Trial Exhibits). This Order required Edwards to produce all trial exhibits that had not already been produced by December 20, 2017 and to produce all specific exhibits to a general “catch-all” category by no later than January 5, 2018. Although the Order did not specifically require Epstein to do the same, the reason was straightforward: Epstein claimed that he already produced all specific trial exhibits on December 19, 2017.

exchange, Epstein was “strictly limited” to those 27 specific documents absent a showing of good cause, which would necessarily require the filing of some motion seeking relief from the Court.

Throughout February 2018, Epstein began piecemeal producing additional proposed exhibits, in violation of the orders discussed above. Epstein’s violation of the Court’s orders culminated on March 2, 2018, with the eve-of-trial² production of 198 new emails, all illicitly obtained, under Exhibit #13, which included at least forty-nine (49) privileged emails that are listed on Edwards’s April 2012 privilege log.

On March 5, 2018, Epstein filed the instant Motion to Declare Relevance.³ That same day, Edwards moved to strike Epstein’s supplemental exhibits and to strike all exhibits and any reference to documents contained in Edwards’s April 2012 privilege log.

On March 8, 2017, this Court held a hearing on several outstanding motions. One issue addressed involved Epstein’s late disclosure of the privileged documents. Edwards suggested that his motion to strike be addressed first because it could alleviate the need to delve into other issues related to Epstein’s intended use of the privileged emails (3/8/18 PM Tr. pp. 3-7). A copy of the transcript is attached as Exhibit C. After extensive argument by counsel, the Court granted the motion to strike, finding that Epstein should have produced the documents in question and raised any issues relating to the privileged nature of the documents long before the already expired time for the production of exhibits. The Court explained:

[T]hese materials were in the hands of Epstein’s attorneys from the inception of the issue itself, and to now come to the Court with not five pages of documents to look at, but 27,000, or whatever that number is – it escapes me because of its shear mass – is impossible and is not going to be countenanced here.

² Trial was set to begin on March 13, 2018.

³ Epstein filed a supplement to the Motion on April 4, 2018 and filed supplemental authority on April 5, 2018.

The issue though, is one of whether the protocol and the orderly administration of justice is going to be forsaken notwithstanding also the aspect of privilege and the sanctity of privileged communications, whether all of those considerations are going to be thrown out **when balanced against material that has been in the hands of Mr. Epstein's lawyers from day one**. And I, for one, am not going to sacrifice protocol over what may or may not be, number one, privileged, and if not privileged, **certainly late disclosed documentation of a massive nature**.

Again, if this was something that came into play that was being hidden by the other side, and I'm talking now generically, and your side discovered that information at the 11th hour, this would be an entirely different discussion. And that's one of the things I want to emphasize for this record. But that's not the case.

As I mentioned – and this is the last time I'll say it – **these documents have been in the possession of Mr. Epstein from the inception of this case as we know it**. They didn't move. And the problems that are inherent in this analysis of which this Court simply does not have the time to address prior to trial are all of these reasons that I have just described to you: The disruption of the orderly administration of justice, the sacrosanct nature of the privilege, and of even more importance is what I said I wouldn't repeat; and that is, **that at all times material to the analysis, from the inception Epstein lawyers had this material, And obviously, the timeliness, or the abject untimeliness of the request for the Court now to take these matters into consideration, where they are well beyond when exhibits that were known or should have been known were not listed**.

That's the point I'm trying to drive home and emphasize. It is not only the issue of timeliness, not only the issue of the privilege that has not been tested, but first and foremost is the fact that Fowler White, Epstein's own lawyers, have been sitting on this from day one for seven, eight years.

(3/18/18 PM Tr., pp.51-57)(emphasis added). Thus, this Court found that Epstein could not utilize exhibits, regardless of the privilege issue, which he had possession of since the beginning of the case but failed to list until months after the deadline to do so had expired.

Timeline of the privileged materials at issue

In order to orient the Court as to the specific issue of Edwards's privilege log, Edwards has compiled the following timeline concerning the privileged e-mail communications at issue. Because the privileged materials are e-mail communications from RRA, Epstein originally sought these records in the Bankruptcy Court to be produced by the Trustee appointed to oversee the RRA

bankruptcy proceeding. Edwards has highlighted the key state court docket entries for the Court's convenience:

State Court	December 7, 2009	Epstein initiated this suit against Edwards, Rothstein, and one of Edwards' clients, designated as "L.M." Epstein claimed, generally, that Rothstein, Edwards and L.M. defrauded him and engaged in criminal conduct, as well as abuse of process, by grossly exaggerating the value of three civil sexual assault actions Edwards brought against Epstein on behalf of L.M. and others.
Bankruptcy Court	April 17, 2010	Epstein propounded a broad subpoena to the Trustee for RRA as an interested party in the bankruptcy case of In re: Rothstein Rosenfeldt Adler, 09-34791-RBR, requesting tens of thousands of emails (the subpoena was directed to the bankruptcy trustee because the trustee was in possession of all RRA emails).
Bankruptcy Court	July 19, 2010	LM (one of Epstein's victims) filed an objection and amended motion for protective order, DE 819, explaining that the emails requested were barred from disclosure based on privilege and relevance grounds.
Bankruptcy Court	August 13, 2010	Judge Rey in the bankruptcy action entered an order directing production of the emails to a special master, Judge Carney, appointed to oversee the emails produced and to prepare a privilege log. DE 888.
Bankruptcy Court	September 20, 2010	After having received 27,590 emails, Special Master Carney moved for clarification of the Order and made suggestions that LM's attorneys, including Edwards, were in a better position to create a privilege log.
Bankruptcy Court	September 27, 2010	Edwards moved for protective order through counsel Jack Scarola, adopting LM's arguments for a protective order and invoking work-product privilege. DE 1022.
Bankruptcy Court	September 30, 2010	LM joined in that DE 1022 motion and requested further clarification. DE 1038.
Bankruptcy Court	October 13, 2010	Hearing on Motion to Clarify before Robert Carney.

Bankruptcy Court	October 15, 2010	The bankruptcy court entered an Order which clarified its earlier Order, DE 1068, requiring that the trustee provide the emails at issue to Farmer Jaffe Weissing Edwards Fistas Lehrman (Edwards's firm at the time which was representing LM) and requesting FJWEFL prepare the log. The order also provided a procedure for the special master to hold a hearing about assertions of privilege.
State Court	November 23, 2010	Epstein filed his amended privilege log.
Bankruptcy Court	November 30, 2010	The court authorized Epstein's predecessor counsel, Fowler White, to copy the RRA emails and to provide copies to Judge Carney and FJWEFL. The court expressly prohibited Fowler White from retaining any copies of the documents. A copy of the Order is attached as Exhibit D.
Bankruptcy Court	December 16, 2010	LM filed a motion requesting a stay of the Order directing the preparation of a privilege log until after the time when the State court ruled on the then pending Motion for Summary Judgment. DE 1236.
Bankruptcy Court	December 22, 2010	Bankruptcy court entered an order extending the time for production of the privilege log until January 31, 2011. DE 1260.
State Court	January 25, 2011	FJWEFL produced 8,408 pages of non-privileged documents to Epstein.
Bankruptcy Court	January 26, 2011	FJWEFL served a privilege log, and the sufficiency of that log was challenged by Epstein in the bankruptcy court. DE 1442.
State Court	February 8, 2011	Epstein filed a Motion to Compel/Motion to Determine if Privilege Claims are Waived for failure to provide a privilege log.
Bankruptcy Court	February 15, 2011	FJWEFL filed a privilege log in the Bankruptcy Court.

Bankruptcy Court	February 23, 2011	FJWEFL filed an updated privilege log (the current privilege log) detailing the emails where privilege was being maintained. In addition to filing the privilege log, FJWEFL produced to counsel for Epstein, 12,711 pages of documents divided into two separate categories respectively labeled “attorneys eyes only” and “Farmer Jaffe Irrelevant E-Mails.” Two boxes of “attorneys eyes only” documents were produced containing 1,829 pages of documents in the first box and 3,198 pages of documents in the second box. Two additional boxes of “Farmer Jaffe Irrelevant E-Mails” were also produced containing 3,804 pages of documents in the first box and 3,880 pages of documents in the second box
State Court	March 30, 2011	Judge Crow entered an order staying the subpoena to the trustee.
State Court	July 12, 2011	Epstein’s Motion for Leave to Use Attorneys Eyes Only Documents produced under confidentiality agreement.
State Court	July 14, 2011	Edwards protective order granted. Epstein request for all emails is overbroad and not necessarily calculated to lead to admissible evidence.
State Court	March 9, 2012	Epstein Motion to Compel and Amend Protective Order relating to the subpoena to the Bankruptcy Trustee.
State Court	April 10, 2012	Order requiring Edwards to produce any non-privileged documents as identified in paragraph 13 of Edwards’s Motion to Compel and Amend Protective Order.
State Court	April 11, 2012	Epstein files Edwards’s February 23, 2011 Privilege Log from the Bankruptcy Court in this case. This Privilege Log identifies many of the privileged materials that Epstein is now attempting to use at trial.
State Court	April 11, 2012	Epstein Motion to Compel production of documents from Edwards and for Sanctions.
State Court	May 7, 2012	Edwards produces 163 pages of additional responsive documents in compliance with April 10, 2012 Order
State Court	May 8, 2012	Order requiring better Privilege Log
State Court	May 15, 2012	Edwards Motion for Clarification on Discovery Issues to clarify the scope of the May 8, 2012 Order.

State Court	May 15, 2012	Epstein Motion to Compel Discovery Responses and for Sanctions
State Court	May 30, 2012	Epstein Amended Motion to Compel Discovery Responses and for Sanctions
State Court	August 3, 2012	Hearing on Motion for Clarification on Discovery Issues.
State Court	August 14, 2012	Scarola letter to Judge Crow enclosing proposed Order on Motion for Clarification on Discovery Issues. <i>Provided before Epstein voluntarily dismissed his claims against Edwards</i>
State Court	August 16, 2012	Epstein voluntarily dismisses case against Edwards without prejudice.
State Court	August 17, 2012	Judge Crow grants Edwards' Motion for Clarification and vacates his May 8, 2012 Order requiring an amended privilege log.⁴ <i>Edwards' April 12, 2012 Privilege Log remained in full force and effect. Epstein never challenged the sufficiency of that privilege log or made any attempt to overrule Edwards' privilege assertions or compel production of these privilege materials.</i>

To summarize, Edwards was provided with a total of 27,590 emails to evaluate. On January 25, 2011, Edwards produced 8,408 pages of non-privileged emails to Epstein. On February 23, 2011, Edwards produced an additional 12,711 pages of emails, which included 5,027 pages of emails that were designated “Attorney’s Eyes Only.” Between the January 25 and February 23, 2011 productions, Edwards turned over 21,119 pages of emails to Epstein. Edwards properly listed

⁴ Judge Crow’s Order also required Edwards to “file a written response specifically addressing the production sought in Paragraph 13 of Epstein’s Motion to Compel and Amend Protective Order of March 9, 2012 … [the response] shall identify, in a proper privilege log as referenced in the Court’s May 7, 2012 Order, responsive documents withheld from production on the basis of any assertion of privilege.” Paragraph 13 of Epstein’s Motion to Compel concerned emails between RRA lawyers and either (1) the Federal Government; (2) Conchita Sarnoff; and (3) any news reporters. Because Epstein had already voluntarily dismissed his action against Edwards, Edwards did not produce any written response to Paragraph 13 or any emails between RRA and these third parties. Epstein thereafter made no effort to seek production of these emails.

the remaining 6,471 pages of emails on his privilege log filed on February 23, 2011 in the Bankruptcy Court. Pursuant to Epstein's July 12, 2011 Motion for Leave to Use Attorneys' Eyes Only Documents Produced Under Confidentiality Agreement, the Attorneys' Eyes-Only documents are governed by a confidentiality agreement.

On April 11, 2012, Epstein filed Edwards's privilege log from the bankruptcy case in this case. Pursuant to Judge Crow's August 17, 2012 Order vacating his prior Order requiring Edwards to file a better privilege log, the February 23, 2011 privilege log filed in this case on April 11, 2012 remains in full force and effect.

After voluntarily dismissing his claims against Edwards, Epstein never sought to overrule any of these privilege assertions or to compel production of the privileged materials listed on the log. Epstein has obviously been on notice of the privileged nature of those documents knew they had been withheld from production, and for years until the eve of trial, abandoned all efforts to challenge Edwards' privilege assertions.

LEGAL ARGUMENT

- 1. All argument in Epstein's Motion to Declare Relevance and Supplement stating or otherwise implying the alleged substance of the documents in question should be stricken and/or disregarded.**

Edwards maintains that the late listed and illicitly obtained materials in question are privileged, as outlined in the privilege log filed in this Court in April 2012, which has been in full force and effect for over six (6) years.

Unfortunately, due to Epstein's improper prior possession of the documents in question, Epstein and his counsel have seen the content of the materials. Epstein has improperly referred to, mischaracterized, and relied upon the contents of the materials to support his position in the instant motion and supplement. Edwards contests Epstein's mischaracterization of the contents of the

material but he cannot address the issue further as he does not want to be accused of waiving his privilege claims. Suffice it to say, Edwards strongly disagrees with the characterizations of the contents of the emails in question portrayed by Epstein.

Edwards asks that this Court strike and/or disregard all such improper references to the contents of the materials when considering this issue as Epstein should never have been in possession of the materials to start with. Epstein should not be permitted to capitalize on his improper possession of the privileged materials by purporting to rely on the content of said materials, especially where Edwards cannot contest the allegations made by Epstein.

2. This Court should refuse to readdress this issue which it has already decided.

As discussed above, on March 8, 2018, this Court expended significant time considering the issue of whether Epstein could use the privileged documents in question during trial. The instant motion was pending at the time and was necessarily considered in conjunction with Edwards's Motion to Strike Epstein's late filed exhibits. Based on the Court's decision that the exhibits would be excluded because they were filed months after the deadline for listing exhibits, despite the fact that Epstein's counsel had possessed the documents since the inception of these proceedings, the Court did not need to address the issues raised in Epstein's Motion (i.e., determine relevance and privilege issues, hold in camera proceedings, etc).

Epstein's eleventh-hour antics have cost this Court and Edwards enough time. The Court should not now waste more time reconsidering an issue which has already been decided. Epstein's Motion should be denied without further discussion for the reasons expressed by the Court in its oral ruling on March 8, 2018.

3. The deadline to amend exhibit lists has long since passed.

Edwards maintains his position expressed in his March 5, 2018 Motion to Strike, argued on March 8. All exhibits produced by Epstein after December 20, 2017 in violation of this Court’s July 20, 2017 Order, December 5, 2017 oral ruling, and January 16, 2018 Order should be stricken. Additionally, all exhibits produced by Epstein that contain or reference privileged material included on Edwards’s April 2012 privilege log should be stricken. This is consistent with this Court’s oral ruling on March 8, 2017.

Although Edwards does not believe that this Court should expend the time to consider the merits of Epstein’s arguments, Edwards addresses them below.

4. Edwards did not waive his work product objections.

“Attorney-client privilege and work-product immunity are important protections in the adversarial legal system, and any breach of these privileges can give one party an undue advantage over the other party.” *Nevin v. Palm Beach County Sch. Bd.*, 958 So.2d 1003, 1008 (Fla. 1st DCA 2007). Accordingly, “waiver of the attorney-client and work-product privileges is not favored in Florida.” *TIG Ins. Corp. of Am. v. Johnson*, 799 So.2d 339, 341 (Fla. 4th DCA 2001).

- a. *Edwards did not waive work product protection for all but new and ongoing cases against Epstein.*

Epstein claims that Edwards waived work product protections as to the materials in question (Supp., pp. 6-8).⁵ By including the documents on his privilege log instead of turning them over to Epstein. This contention is obviously absurd.

⁵ This is a reference to the Supplement to Epstein’s Motion to Declare Relevance, filed on April 4, 2018.

Epstein relies upon excerpts from an email sent by Edwards's former firm, Farmer Jaffe Weissing Edwards Fistos Lehrman, to Judge Carney, discussing the management of the production of the thousands of RRA emails Epstein subpoenaed. The relevant portion of that emails provides:

We will agree to prepare a revised log in which we add dates for the emails and a description of the subject matter and parties. But we will also omit from the log any work product privilege objections, subject to the following agreement. All work product materials will be turned over to Plaintiff except for materials related to new or ongoing cases, AND on the condition that they are produced "For Attorneys' Eyes Only" such that no copies or images will be made of them, and Epstein will not see these documents, unless and until such time as Judge Crow and/or Judge Ray has overruled any privilege claim (following your recommended report, of course). If the objections are sustained, the documents will be returned to us and no copies retained by Plaintiff's attorneys; if the objections are overruled and the documents otherwise deemed discoverable, Plaintiff gets them. **The Plaintiff and his attorneys will also agree that by entering into this agreement and producing these documents as described, Plaintiff will not take the position that we have waived any privilege.**

(Supp., Ex. B)(underline in original, bold added). Thus, the agreement contemplated that even as to documents *actually turned over* to Epstein's counsel for "Attorneys' Eyes Only" review, any claim of privilege would not be waived.

Epstein's argument appears to be that because he believes the documents in question should have been turned over for Attorneys' Eyes Only review and they were not, Edwards waived his work product protection claims. This argument is meritless. Regardless of whether the documents in question should have been turned over for Attorneys' Eyes Only review pursuant to the agreement between the parties, the protection would never have been waived. That is because the parties agreed that the privilege would not be waived as to documents turned over for Attorneys' Eyes Only review. In addition, the emails that Epstein relies upon clearly state that materials related to ongoing cases are exempt from that agreement, which includes emails related to the Crime Victim's Rights Act proceeding. Thus, none of the emails in question were subject to production at all, whether Attorney's Eyes Only or any other form.

Furthermore, the documents in question were not, in fact, turned over. They were listed in the privilege log. There is no support for the implication raised by Epstein that the alleged failure to properly execute an agreement regarding the management of purported work-product waives the work product privilege, especially where the documents are listed on a privilege log and where the privilege would have maintained regardless of how they were addressed. To the contrary, even if Edwards had originally agreed to turn over the documents for Attorneys' Eyes Only review, he was free to reassert the right to include the documents in his privilege log at any time before disclosure. *See Liberty Mut. Ins. Co. v. Lease Am., Inc.*, 735 So.2d 560, 561-62 (Fla. 4th DCA 1999)(noting that the initial failure to make a claim for privilege does not result in the waiver of the privilege); see also *Truly Nolen Exterminating, Inc. v. Thomasson*, 554 So.2d 5, 5-6 (Fla. 3d DCA 1989)(failure to assert work-product privilege at earliest opportunity does not constitute waiver "so long as the privilege is asserted by a pleading, to the trial court, before there has been an actual disclosure of the information alleged to be protected"), rev. dismissed, 558 So.2d 20 (Fla.1990); *Insurance Co. of N. Am. v. Noya*, 398 So.2d 836, 838 (Fla. 5th DCA 1981) (failure to file timely objections does not bar party from asserting privilege).

b. Edwards did not waive work product protection by sharing the documents with third parties.

Epstein contends that Edwards waived the work product protections by providing the materials in question to attorneys from Conrad & Scherer working on the *Razorback* litigation (Supp., p.8). Conrad & Sherer, however, entered into a joint prosecution agreement with Edwards' counsel, whereby both parties agreed to share information relative to their claims and/or defenses related to Scott Rothstein without waiving privilege as to their communications or documents shared.

“Voluntary disclosure of alleged work product waives work-product privilege where that disclosure is inconsistent with maintaining secrecy from the disclosing party’s adversary—or, in other words, the disclosure substantially increases the chance that the opposing party will obtain the information.” *Tumelaire v. Naples Estates Homeowners Ass’n, Inc.*, 137 So.3d 596, 599 (Fla. 2d DCA 2014). Here, Edwards’s disclosure to Conrad & Scherer was not inconsistent with his intent to maintain secrecy from Epstein. To the contrary the disclosure was done pursuant to a joint prosecution agreement whereby Edwards and Conrad & Scherer agreed that the material would not be disclosed to adverse parties, including Epstein.

- c. *Edwards did not waive work product protection by bringing his malicious prosecution claim.*

Epstein claims that the work product protection has been waived here because the emails at issue directly relate to issues Edwards “injected” into his malicious prosecution counterclaim⁶ (Supp., pp.9-10). This argument is meritless.

It is well-established that “[a] party does not waive the attorney-client privilege merely by bringing or defending a lawsuit.” *Coates v. Akerman, Senterfitt & Eidson, P.A.*, 940 So.2d 504, 508 (Fla. 2d DCA 2006). “Instead, waiver occurs when a party ‘raises a claim that will necessarily require proof by way of a privileged communication.’” *Id.* (quoting *Jenney v. Airdata Wiman, Inc.*, 846 So.2d 664, 668 (Fla. 2d DCA 2003)); *see also Savino v. Luciano*, 92 So.2d 817, 819 (Fla. 1957)(noting that the “at issue” doctrine provides that “when a party has filed a claim, based upon a matter ordinarily privileged, the proof of which will necessarily require that the privileged matter be offered in evidence, we think that he has waived his right to insist, in

⁶ Much of this argument is based upon Epstein’s mischaracterization of the contents of the emails in question. As discussed above Epstein should not have read the contents of the emails in question and should not be permitted to rely upon the alleged contents of the emails to support his argument.

pretrial discovery proceedings, that the matter is privileged.”). “Thus, for waiver to occur under the at issue doctrine, the proponent of a privilege must make a claim or raise a defense based upon the privileged matter and the proponent must necessarily use the privileged information in order to establish its claim or defense.” *Coates*, 940 So.2d at 510.

Here, Edwards’s malicious prosecution claim was not based upon the emails at issue here. Edwards certainly will not be using the privileged information to establish his claim against Epstein.

The elements of a malicious prosecution claim are:

- 1) the commencement of a judicial proceeding; 2) its legal causation by the present defendant against the plaintiff; 3) its bona fide termination in favor of the plaintiff; 4) the absence of probable cause for the prosecution; 5) malice; [and] 6) damages.

Rivernider v. Meyer, 174 So.3d 602, 604 (Fla. 4th DCA 2015). All of these elements, other than damages and bona fide termination, require proof as to Epstein’s state of mind and knowledge at the time the original action against Edwards was commenced and/or continued. Because Epstein did not have the work product in question when suit was filed or continued, Edwards’s claim cannot be based upon those materials.

Epstein also implies that the emails are relevant to Edwards’s claims for damages because they may contradict his claims regarding the effect of Epstein’s claims on him. However, some possible relevance is not the standard for waiver based upon issue injection. It is well established that the “possibility that the disputed documents may be relevant to or may assist the lawyers in their defense … or may perhaps assist in the lawyers’ efforts to impeach the clients, does not create a waiver of the privilege.” *Coates*, 940 So.2d at 509 (citing *Jenney*, 846 So.2d at 668 (“[A]ttorney-client privilege is not waived simply because the credibility of Jenney’s statements concerning his intent could possibly be impeached by his communications with his former attorney.”); *Choice*

Restaurant Acquisition Ltd. v. Whitley, Inc., 816 So.2d 1165, 1167-68 (Fla. 4th DCA 2002) (discussing the accountant-client privilege and noting that “a court cannot justify finding waiver of the privilege merely because the information sought is needed by the opposing party to provide information helpful to cross examination or for the defense of a cause of action” and that “mere relevance of the information is not sufficient grounds to override this privilege”); *Coyne v. Schwartz, Gold, Cohen, Zakarin & Kotler, P.A.*, 715 So.2d 1021, 1023 (Fla. 4th DCA 1998) (determining, in a legal malpractice action, that the defending law firm’s assertion that a subsequent firm had been negligent did not serve to override the client’s attorney-client privilege with the subsequent firm); *Shafnaker v. Clayton*, 680 So.2d 1109, 1111 (Fla. 1st DCA 1996) (concluding that respondents could not discover communications petitioners had with other attorneys even though the information may have assisted respondents in their defense).

By seeking damages for intangible elements such as “anxiety” Edwards has not opened the door for Epstein to obtain privileged work product which he believes may offer some vague insight into mental well-being. In other words, Epstein is not entitled to breach the sacrosanct work product and attorney-client privileges just because he thinks the materials at issue here *may* help him impeach Edwards regarding his damages claim.

d. Edwards’s privilege log was not inadequate and did not waive work product protections.

Next, Epstein claims that Edwards waived the relevant privileges by deliberately concealing the emails in question in a “159-page privilege log” which was somehow an “improper device.” (Supp., p.10). There are many problems with this argument. First and foremost is the implication that Edwards filed a 159-page privilege log to conceal the documents in question. The size of the privilege log was necessitated by the overbroad request made by Epstein, who sought tens of thousands of documents. Edwards made every effort to produce all non-privileged

documents and made great efforts to limit the number of documents on the privilege log in order to lessen the burden on Judge Carney. Additionally, it is unfathomable that Epstein claims that Edwards “concealed” documents which were **expressly listed in a privilege log**.

Epstein challenges the legal sufficiency of Edwards’s privilege log by claiming Edwards waived the relevant privileges by not complying with Judge Crowe’s August 17, 2012 order to file a written response. In the order in question, Judge Crowe actually vacated his earlier order requiring Edwards to file an amended privilege log. In addition, Judge Crowe ordered Edwards to file a written response to Paragraph 13 of Epstein’s Motion to Compel and to identify “in a proper privilege log,” “responsive documents withheld from production on the basis of any assertion of privilege.” Paragraph 13 concerned emails between RRA lawyers and either: (1) the Federal Government; (2) Conchita Sarnoff; and (3) any news reporters. Because Epstein had already voluntarily dismissed his action against Edwards, Edwards did not produce any written response to Paragraph 13 or any emails between RRA and these third parties. Epstein thereafter made no effort to seek production of these emails and never challenged the facts that Edwards’s did not file the response requested by Judge Crowe. The issue of the privilege log never came up again until March 2018 when, on the eve of trial, Epstein sought to introduce the emails at issue here. As this Court noted at the March 2018 hearing, it was too late for Epstein to challenge the absence of the response in question.

Epstein also makes specific challenges to the April 2012 privilege log and purports to explain why it is legally deficient (Supp., pp.13-14). However, again, this argument is too little, and much too late. The time for Epstein to challenge the privilege log has long since passed. The parties have been litigating this case for years and Edwards and this Court have done everything within their power to ensure it is tried. Epstein’s latest effort to derail trial by raising issues which

should have been raised more than 6 years ago must be rejected. Despite Epstein's protestations to the contrary, discovery in this nearly decade old case is closed.

5. Epstein's Belated Claims that there is no privilege fails.

Epstein claims that there are several viable challenges to Edwards's claims of attorney-client privilege (Supplement pp.15-16). Again, as made clear above, the time for challenging Edwards's privilege claims has long since passed. In fact, Epstein did challenge the sufficiency of Edwards's privilege log and that challenge was ultimately rejected with the exception of one subset of inquiries. As to that issue, Epstein had nearly 6 years to raise Edwards's failure to file the response required by Judge Crowe in his August 2012 order. He did not do so. He has thus waived the right to raise these challenges now.

Epstein argues summarily that the crime-fraud exception precludes Edwards's claim of privilege here (Supp., p.16). In support of this specious claim, he filed the Eleventh Circuit Court of Appeals' recent decision in *Drummond Co., Inc. v. Conrad & Scherer, LLP*, 885 F.3d 1324, 1331 (11th Cir. 2018) as supplemental authority. This argument is frivolous.

Pursuant to the "crime -fraud exception," no attorney-client privilege exists where a client seeks or obtains a lawyer to aid in the commission of a crime or in the planning of future criminal activity. *See* §90.502(4)(a). To establish the crime-fraud exception, the "**party seeking to defeat a claim of attorney-client privilege on crime-fraud grounds must first put on a *prima facie* case that the crime-fraud exception applies.**" *First Union Nat. Bank v. Turney*, 824 So. 2d 172, 183 (Fla. 1st DCA 2001)(emphasis added). In other words, "the moving party must make out a *prima facie* case that the party asserting the attorney-client privilege employed counsel or sought a lawyer's advice in order to commit, or in an attempt to commit, some crime or fraud." *Id.* (citing *Am. Tobacco Co. v. State*, 697 So.2d 1249 (Fla. 4th DCA 1997)).

In establishing a *prima facie* case, the disputed documents themselves cannot be used for this purpose, unless the party asserting the privilege consents. *Turney*, 824 So.2d at 183. AS the First District has explained:

Absent agreement otherwise, the trial judge should not examine written communications between attorney and client, unless the party seeking to establish the crime-fraud exception adduces competent evidence, apart from the disputed documents, that would lead a reasonable person to believe that such an examination would reveal that the communications were part of an effort to perpetrate some crime or fraud.

Even if *in camera* inspection makes it appear that the crime-fraud exception applies, a full evidentiary hearing is necessary (unless waived by the proponent of the privilege), before confidential communications between attorney and client can be disclosed to another party. When communications appear on their face to be privileged or the privilege is otherwise established, the party seeking disclosure bears the burden of proving that they are not.

Id. at 183-84 (internal citations omitted). These predicate factual questions must be established by a preponderance of the evidence standard. *Id.* at 184 (citing §90.105(1)).

In *Drummond*, the Eleventh Circuit affirmed the District Court's decision that the party opposing a claim of work-product privilege had established a *prima facie* case that the exception applied. Here, on the other hand, Epstein has presented **absolutely no evidence** to establish a *prima facie* case that the crime-fraud exception applies here. Epstein relies solely on innuendo, stemming from his mischaracterizations of the contents of the materials in question, to imply that the exception applies here; however, as discussed above, the disputed documents themselves cannot be used to establish a *prima facie* case that the crime-fraud exception applies. This Court may not even review the materials *in camera* without this showing by Epstein. Epstein has fallen far short here of establishing application of the crime-fraud exception.

6. Epstein should not be rewarded for violating the bankruptcy court order requiring that neither he nor his attorney maintain the emails in question.

Epstein belatedly renewed his interest in the privileged documents only after his current counsel, Link & Rockenbach, obtained copies of the documents from his predecessor counsel, Fowler White. As noted above, Fowler White was tasked by the bankruptcy court with copying and Bates stamping the thousands of RRA emails it sought to be produced. However, Fowler White and Epstein were expressly prohibited by the bankruptcy court from retaining copies of the documents after turning over copies to the special master and Edwards's former law firm. Fowler White violated that order by retaining a disk containing the emails, which it recently sent to Link & Rockenbach.

This Court has already imposed the following express restrictions on Epstein, as to the emails:

- Barred Epstein from “referring to [in trial] any of those records as it relates to the documents that were gathered from Fowler White or from any other source that would have included those records that were subject of Judge Ray’s order” (3/18 Tr, pp.75-76); and
- Prohibited Epstein from making any use of the 724 late-disclosed exhibits (3/8/18 Tr., pp.59).

The Court further stated:

As a general blanket order I would simply say that all attorneys who have or are representing Mr. Epstein shall be subject to this order of confidentiality, of sealing **and of non-dissemination of any such information that is contemplated in any of the documents that are part of the umbrella order of Judge Ray**. And that would include all of the exhibits that we spoke about today and that have been filed as a matter of record.

(3/8/18 Tr., p.79).

Epstein not only violated the bankruptcy court order by retaining the emails, he violated this Court's rulings by referring to the content of the emails and relying upon gross mischaracterizations of the content of those emails to support its arguments.

Epstein cannot be permitted to benefit from his own misconduct. This Court should affirm its prior decision to preclude Epstein from using or otherwise referring to the illicitly obtained emails. It should certainly not reward Epstein's misconduct by allowing him to belatedly list the privileged emails as exhibits and reopen discovery issues that Epstein abandoned years ago.

7. In camera review is not necessary based upon the Court's determination that Epstein was not permitted to add exhibits long after the time for amendments to the exhibit lists had passed, especially where the documents in question had been in the possession of Epstein's counsel for many years.

Epstein begins his request for in camera inspection by noting that "no court or special master has ever determined the relevancy, privilege or waiver of the emails identified on Edwards's privilege log ..." (Supp., p.17). The irony there is of course that it was Epstein who failed to follow through on his original challenge to the privilege log which was filed in this Court more than six years ago. Thus, it was his own fault that this issue was never completely resolved by the Court because he abandoned his challenges to the privilege log years ago.

Epstein cites a quote from Edwards's counsel from the March 2018 hearing to support a claim that Edwards has agreed to an in-camera review (Supp., p.17). However, Epstein takes this quote out of context. The quote in question was from a portion of the hearing discussing the dissemination of the RRA emails to Conrad & Scherer as part of the joint prosecution agreement, discussed above. Counsel explained:

Well, there were direct negotiations in which I was a personal participant with the lawyers for Conrad Scherer, and an agreement was reached with the lawyers for Conrad Scherer because, as we have told every judge before whom we have appeared with regard to these matters, we're not attempting to hide anything. You

want to conduct an in-camera inspection, we want you to conduct an in-camera inspection because it will confirm that we're not attempting to hide anything.

(3/8/18 Tr. p.15). Thus, the comment in question was made to make clear that historically, Edwards has always been ready, able, and willing to produce the emails identified in the privilege log for in camera inspection if required by a court. Edwards did not waive his claim raised expressly in his Motion to Strike and argued at the hearing that Epstein had raised the issue too late, in violation of multiple court orders and thus the documents could not be used by him, regardless of any privilege. Accordingly, Edwards maintained, it was not necessary for the Court to conduct an in-camera review or engage in any more discussion as to the privileged nature of the documents. *See* (3/8/18 Tr. p.5).

Edwards maintains now that an in camera inspection is not warranted because Epstein should be precluded from using the privileged emails at trial due to his untimely listing of them as exhibits, as this Court has previously ruled. Only, if this Court agrees (over all of the objections raised by Edwards) to reconsider its prior ruling on that matter and seeks to consider the merits of the privilege claims raised by Edwards, Edwards agrees that in camera inspection is an appropriate next step in the privilege analysis.

CONCLUSION

For the reasons expressed above, Epstein's Motion for Court to Declare Relevance and Non-Privileged Nature of Documents, and Request for Additional Limited Discovery, Evidentiary Hearing and Appointment of Special Master should be denied.

I HEREBY CERTIFY that a true copy of the foregoing was furnished to all counsel on the attached service list, by email, on July 26, 2018.

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Epstein v. Rothstein/Edwards

Case No. 502009CA040800XXXXMB

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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 THE COURT: Good morning. Welcome
2 back. All right. As I understand it, you
3 want to start with the issue of the motion
4 to amend the answer and affirmative
5 defenses. Is that accurate?

6 MR. SCAROLA: That is, sir. Yes.

7 THE COURT: I will be glad to do that.
8 I have reviewed the materials from both
9 sides. Thank you for that.

10 MR. LINK: Whenever you are ready,
11 Judge.

12 THE COURT: Whenever you are ready, go
13 ahead, sir.

14 MR. LINK: Good morning, Your Honor.
15 Scott Link on behalf of the plaintiff. It
16 is our motion for leave to amend the
17 affirmative defenses. You have to put that
18 in context, Your Honor.

19 That is, why do we need affirmative
20 defenses that sound in defamation, and they
21 do. The reason they do is because the
22 counter-plaintiff in this case has made it
23 very clear that they are trying the
24 allegations in the statements in the
25 complaint.

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25

1 At the last hearing, Mr. Scarola handed
2 this out and showed us very clearly what
3 their plan is. And this is their plan.
4 They believe that we're trying the factual
5 allegations of the complaint to see whether
6 they were true or false.

7 As this Court knows, in the recent
8 Supreme Court case dealing with this case,
9 the Supreme Court made it very clear that
10 there is a narrow exception to the
11 litigation privilege. That exception is for
12 malicious prosecution. But the Supreme
13 Court told us in that opinion, Your Honor --
14 I will share it with the Court -- the
15 Supreme Court told us in that opinion, Your
16 Honor -- gave us a roadmap.

17 The Supreme Court told us.

18 THE COURT: That Debrincat,

19 D-E-B-R-I-N-C-A-T versus Fischer --

20 MR. LINK: That's correct, Your Honor.
21 THE COURT: -- from the Florida Supreme
22 Court, So.3d cite that the parties are well
23 familiar with.

24 MR. LINK: If you look at this case,
25 you will see that the Supreme Court made it

1 very clear and gave us a roadmap. The
 2 Supreme Court said, really simply -- and it
 3 makes sense -- that if the litigation
 4 privilege applied to the elements of a
 5 malicious prosecution action, there would
 6 never be a malicious prosecution action.

7 Plus the Supreme Court reaffirmed that
 8 every statement made in the proceeding
 9 itself -- the allegations of the complaint,
 10 the statements of witnesses, the statements
 11 of lawyers, and the statements of the
 12 judges -- are absolutely protected. That's
 13 why the court lays out the elements. And
 14 the elements the court lays out talk about
 15 only the actual initiation of the lawsuit.

16 So if you turn, Your Honor, to page two
 17 of three, the court sets forth the elements.
 18 We will talk about these elements. The
 19 Supreme Court really give us clarity.

20 At the bottom of the page two, it talks
 21 about an original criminal or civil judicial
 22 proceeding -- an original proceeding. That
 23 proceeding, according to the Supreme Court,
 24 when you read the Fourth DCA division that's
 25 cited, is the filing, it's the commencement,

1 According to the Supreme Court, our
 2 complaint is protected. We cannot commit
 3 defamation. We cannot commit any action
 4 that's based on wrongful words. The only
 5 thing that's available is a claim for
 6 malicious prosecution focused on the
 7 initiation of the suit.

8 On the last page of this opinion from
 9 the Supreme Court, the court tells us this:
 10 The filing of a lawsuit and the joining of a
 11 defendant is the commencement of a judicial
 12 proceeding.

13 It then says, really importantly, an
 14 action for malicious prosecution which is
 15 based as a matter of law on causing the
 16 commencement of an original judicial
 17 proceeding -- that's what we need focus on.

18 So if we are trying the statements and
 19 the allegations of the complaint, if that's
 20 what we are doing, then we have to have
 21 affirmative defenses that protect us from a
 22 claim based on allegations in the complaint.

23 The last thing I want to show the
 24 Court, on Friday after our hearing, I took
 25 the deposition of Mr. Edwards' expert.

1 it's the action.

2 If you think about where this law came
 3 from, it comes from the criminal system. If
 4 you think about the criminal system, simply
 5 issuing a warrant, starting an
 6 investigation, filing a criminal complaint
 7 in and of itself can cause injury to your
 8 reputation.

9 So the Supreme Court tells us the act
 10 that is not protected by the litigation
 11 privilege is the initiation of a lawsuit.

12 If you look at the probable cause
 13 element, it says there was an absence of
 14 probable cause for the original proceeding.
 15 It doesn't say claim. It doesn't
 16 allegation. It doesn't say statement.

17 So Mr. Scarola tells us three times
 18 during this hearing on the 29th that what he
 19 plans to do -- what he plans to do --
 20 reading from this transcript at page 82, the
 21 first thing Your Honor needs to determine is
 22 the issue we have been focusing on, what are
 23 the factual allegations that we claim were
 24 maliciously prosecuted. And then he goes to
 25 our complaint.

1 May I approach? During the deposition
 2 of Dr. Jansen -- if you turn to page three,
 3 four and five, Your Honor, you will see what
 4 their expert wants to do.

5 The assignment was the level of
 6 dissemination of defaming statements --
 7 defaming statements. That's on page three.

8 Page four. I refer to the statements
 9 associating Mr. Edwards with the illegal
 10 activities of Mr. Rothstein's, the results
 11 of Mr. Rothstein's lawsuits as the defaming
 12 statements.

13 So what they plan to do is put on an
 14 expert to demonstrate that the allegations
 15 of the complaint were defaming and caused
 16 damages, the defamation action.

17 There's nothing in the elements of
 18 malicious prosecution that make it relevant
 19 for an expert to get on the stand and talk
 20 about defaming statements in the complaint.

21 In fact, to do so violates the roadmap
 22 that the Supreme Court just gave us. There
 23 is no better authority than Debrincat on how
 24 this case should go forward. But if they're
 25 going to be allowed to put an expert on to

1 talk about defaming statements, if they are
 2 going to be allowed to put on the
 3 allegations of the complaint and test their
 4 truth or falsity, which are protected by
 5 litigation privilege, we then need to have
 6 affirmative defenses. That sounds like
 7 defamation.

8 Last point I want to point out in
 9 Debrincat, Your Honor, is this. It's in the
 10 analysis, and it's the second sentence of
 11 the analysis. The law has long recognized
 12 that judges, counsel, parties and witnesses
 13 should be absolutely exempted from liability
 14 to an action -- this is the key -- it
 15 doesn't say to defamation -- to an action,
 16 to be specific -- to any action for
 17 defamatory words published in the course of
 18 the judicial proceeding.

19 So if we are exempted from liability
 20 for the words published in the lawsuit, then
 21 we don't need these affirmative defenses,
 22 because they will then have to focus on
 23 probable cause for the judicial proceeding.
 24 But if they are going to be allowed to bring
 25 in allegations of the complaint, truth or

1 THE COURT: I presume that falls under
 2 that same umbrella.
 3 MR. LINK: It does, Your Honor.
 4 Everything that we've asked the Court to
 5 allow us to amend is designed to protect our
 6 record, frankly, that we believe that
 7 everything in our pleading -- let me give
 8 you an example.

9 The Court dismisses Mr. Edwards' count
 10 for abuse of process based on litigation
 11 privilege. At the end of the suit when we
 12 win, if we sued Mr. Scarola for malicious
 13 prosecution in going forward with this case,
 14 are the statements he's made in this
 15 proceedings -- for example, Mr. Epstein is a
 16 serial child molester -- are they protected
 17 because they're part of this proceeding? Or
 18 does he waive the privilege somehow because
 19 we bring a malicious prosecution action?

20 This court tells us very clearly we
 21 could not sue Mr. Scarola for his
 22 statements. It has no purpose in the
 23 malicious prosecution action.

24 But that's what this door is opening.
 25 That's what they want to do. And we suggest

1 falsity, then we need these affirmative
 2 defenses.

3 Otherwise, if you look at our answer in
 4 affirmative defenses, Your Honor, we don't
 5 have any. The reason we don't have any is
 6 we didn't raise advice of counsel. There's
 7 not a statute of limitations defense. We
 8 have no affirmative defenses because we are
 9 defending a malicious prosecution action.

10 But we ask this Court, if this Court is
 11 going to allow them to try the truth or
 12 falsity of the statements in the complaint,
 13 that we be allowed to amend our pleading.

14 THE COURT: You are not seeking to
 15 amend to affirmatively defend on advice of
 16 counsel?

17 MR. LINK: We are not, sir. They are
 18 all defamation affirmative defenses.

19 THE COURT: Well, there's also the
 20 constitutional affirmative defenses that you
 21 are seeking to interpose dealing with the
 22 petition to file against the government or
 23 something along those lines.

24 MR. LINK: Those are all defamation.
 25 They are all protection of speech.

1 to Your Honor we don't want to come back a
 2 second time. We would like to try this case
 3 once. We would like to focus on the
 4 elements of malicious prosecution and not
 5 try a defaming-words case in front of the
 6 jury.

7 Thank you, Your Honor.

8 THE COURT: Okay thank you, Mr. Link.
 9 Who is going to be arguing on behalf of
 10 Mr. Edwards? Mr. Burlington?

11 MR. BURLINGTON: May it please the
 12 Court. I am Phillip Burlington representing
 13 Brad Edwards.

14 I have not heard anything today that
 15 justifies their claim that the rights to
 16 petition the government provides them an
 17 affirmative defense as they allege in their
 18 fifth affirmative defense. That has nothing
 19 to do with defamation. We have explained
 20 why it is not a defense to a malicious
 21 prosecution case. Because, as the US
 22 Supreme Court has stated very clearly,
 23 baseless litigation is not protected by the
 24 privilege to engage in petitioning of the
 25 government under the First Amendment.

1 I would note that even considering the
 2 presentation here, there is not a single
 3 case from any jurisdiction cited by them
 4 that says that any of these defenses are
 5 valid in a malicious prosecution case. Not
 6 a single case.

7 They have gone so far as to cite the
 8 Noerr-Pennington cases, which are anti-trust
 9 cases involving efforts to lobby the
 10 legislative and executive branches of
 11 government, and they have taken that and
 12 tried to apply it to the malicious
 13 prosecution case. That makes no sense.

14 Now, as to the other defenses, they
 15 have also passed over two very critical
 16 considerations which were not addressed in
 17 their motion, and have not been addressed
 18 here. And I hope will not be addressed for
 19 the first time in the rebuttal, since we
 20 addressed it very squarely in our response,
 21 and that is, there are three grounds to deny
 22 a motion to amend. One is where the party
 23 has abused privilege. The second is where
 24 the amendment would prejudice the opposing
 25 party. And then the third is whether the

1 the prejudice to our client. But I will get
 2 back to the legal insufficiency.

3 The argument that the Debrincat case
 4 gives a roadmap is simply wrong. Debrincat
 5 is not a roadmap. It is a dead end. It was
 6 the determination that the litigation
 7 privilege does not apply to a malicious
 8 prosecution case.

9 And this is very clearly stated in the
 10 paragraph preceding its conclusion. This
 11 court has never held that the litigation
 12 privilege protects a litigant from the claim
 13 of malicious prosecution. And other
 14 district courts have recognized that the
 15 litigation privilege does not act as a bar
 16 to a malicious prosecution claim.

17 If the Florida Supreme Court was
 18 holding that it does not bar proof of the
 19 first element of malicious prosecution, they
 20 would have said that and said it remains in
 21 force for the other elements. Clearly they
 22 would not have been as categorical as they
 23 were.

24 What they have done is try to parse out
 25 language, again trying to make the roadmap

1 affirmative defenses would be futile because
 2 they are legally insufficient.

3 Now, in this case, they've raised five
 4 affirmative defenses eight years into the
 5 litigation and mere weeks before of this
 6 special setting that this Court had for this
 7 month.

8 We pointed out in our response there
 9 was no explanation why it took them eight
 10 years to dream up these affirmative
 11 defenses. That is an abuse of the privilege
 12 waiting until the eve of trial after
 13 discovery is almost completely concluded to
 14 raise multiple affirmative defenses, many of
 15 which raise factual issues that would
 16 require further discovery, possibly new
 17 experts, and maybe even a counter-pleading.
 18 Those reasons in themselves are sufficient
 19 to justify denial of this motion.

20 But, I have spent more time on the
 21 futility, because I certainly understand
 22 that Your Honor has always expressed concern
 23 that people are allowed to amend. And
 24 again, we don't think that they should based
 25 on the abuse of the privilege and based on

1 when it's clear this was intended to be a
 2 dead end for that privilege.

3 And they talk about it's only the
 4 initiation of the claim that subjects them
 5 to liability. But even in Debrincat when it
 6 talks about the first element, it says an
 7 original criminal or civil judicial
 8 proceeding against the present plaintiff was
 9 commenced or continued. In this case,
 10 obviously, it was continued.

11 They include the other elements, which
 12 include that there was an absence of
 13 probable cause for the original proceeding.
 14 That means we can prove that the factual
 15 allegations were false, that the legal
 16 claims were invalid, as a matter of law, and
 17 nothing in Debrincat precludes that.

18 It was a simple, very short decision
 19 for the Florida Supreme Court. And it
 20 simply said the privilege does not apply to
 21 malicious prosecution claims.

22 But even putting aside Debrincat, we
 23 have never had a defamation claim. We have
 24 never alleged it. And they have this string
 25 cite of cases that talks about how, well --

1 it's called the single publication rule. If
 2 your cause of action is based on a
 3 defamatory publication, you can't avoid
 4 defenses to defamation or the statute of
 5 limitations by pleading things like
 6 intentional infliction of emotional distress
 7 or tortious interference with business
 8 relationships, so forth and so on.

9 It has nothing to do -- not a single
 10 one of those cases had to do with malicious
 11 prosecution. The only one that comes within
 12 shouting distance is Fridovich. But in that
 13 case, the Fourth District rejected the
 14 malicious prosecution case, because that
 15 case arose out of family allegations that a
 16 family member murdered somebody, and they
 17 were essentially fighting over the estate.

18 They created this conspiracy to bring
 19 claims to the prosecutor to prosecute that
 20 family member for murder. That family
 21 member was ultimately convicted of
 22 manslaughter.

23 So the Fourth District said that's not
 24 a bona fide termination in your favor, so
 25 they eliminated the malicious prosecution.

1 So that's one -- that's the nature of
 2 it. I mean, the fact that there are similar
 3 elements of damage does not convert
 4 malicious prosecution to a defamation count.
 5 And they have cited no case for that
 6 proposition.

7 But even if we go a little deeper into
 8 these defamation claims to the defamation
 9 defenses, they are clearly invalid as a
 10 matter of law.

11 For example, the fifth one -- excuse
 12 me. I have already addressed the fifth one.

13 The sixth one claims that Mr. Edwards
 14 is a public figure. Now, as noted
 15 previously, this would raise a whole new
 16 factual set of issues plus perhaps the need
 17 for experts.

18 But the Gertz case makes it crystal
 19 clear that a private attorney representing a
 20 client -- despite their involvement in a
 21 high-profile case, including their
 22 involvement in a proceeding unrelated to
 23 their civil proceeding -- is not a public
 24 figure. That you cannot convert -- they are
 25 very specific -- you cannot convert a

1 Then they went with defamation counts
 2 and related counts. It was a certified
 3 question in Fridovich -- talks about
 4 defamation.

5 But they have cited no case from any
 6 jurisdiction that says that you can convert
 7 a malicious prosecution case into a
 8 defamation case, and then raise defenses
 9 that are unique to defamation cases.

10 And this reliance on the deposition
 11 taken recently is nothing but -- that was
 12 a -- that was an expert on damages and
 13 damages to reputation as a result of false
 14 statements, which is an inherent part of a
 15 malicious prosecution case. And they have
 16 cited no cases to the contrary.

17 THE COURT: You have cases that cite
 18 affirmatively to that proposition?

19 MR. BURLINGTON: There is a case called
 20 Mancusi out of the Florida Supreme Court
 21 that defined the elements and talked about
 22 it is designed -- in fact, Debrincat says
 23 that malicious prosecution is balanced
 24 between allowing people to bring suits and
 25 protecting the reputation of the individual.

1 private attorney representing a client into
 2 an officer of the court to bootstrap
 3 yourself into saying he's a public official.

4 And they also said in that case that we
 5 are not going to hold that someone who
 6 simply engages in their professional
 7 activities or has involvement in the
 8 community is converted to a public figure.

9 And what they have attached to their
 10 motion to amend -- which they claim Brad
 11 Edwards made himself into a public figure --
 12 is nothing more than website statements on
 13 the law firm where Brad Edwards worked that
 14 talked about some of his cases. And that's
 15 nothing more than his professional
 16 responsibility and professional relationship
 17 for purposes of getting clients.

18 THE COURT: Résumé.

19 MR. BURLINGTON: Excuse me?

20 THE COURT: Résumé.

21 MR. BURLINGTON: Sure.

22 And there's nothing even -- only one of
 23 them mentions Epstein.

24 So they have cited no case from any
 25 jurisdiction that says that a defamation

1 count can result in either a higher burden
 2 of proof or additional affirmative defenses
 3 based on the nature of the individual who
 4 was sued in the baseless litigation.

5 Then their seventh affirmative defense
 6 just asserts generally just as a matter of
 7 public concern, and therefore we have a
 8 higher burden of proof.

9 Again, this is rather late in the game
 10 to start changing, not only the factual
 11 issues, but the burdens of proof. But they
 12 also cite no case from any jurisdiction that
 13 says a malicious prosecution case is altered
 14 on the basis of whether there was a matter
 15 of public concern involved.

16 And here, inverting that notoriety of
 17 Mr. Epstein's criminal conduct into a matter
 18 of public concern is somewhat of a stretch.

19 But also, in the Gertz case there was
 20 notoriety in that criminal case. And Gertz
 21 made it very clear that the private attorney
 22 representing a client in proceedings and in
 23 related proceedings, which had a lot of
 24 publicity, did not convert him to either a
 25 public official or a public figure. And

1 presumption of malice.

2 So that case, the Nodar case, has
 3 nothing to do with either the context of
 4 this case or the cause of action that we had
 5 brought.

6 And they've cited, as I've said, no
 7 malicious prosecution cases to support the
 8 idea that any of these defenses can be
 9 valid.

10 Now, as to the -- I believe it's the
 11 eighth and ninth affirmative defenses, they
 12 are not affirmative defenses at all.

13 Affirmative defense, as the Florida
 14 Supreme Court has stated, is where a
 15 defendant essentially has to admit the
 16 allegations of the pleading. But say --
 17 even assuming that -- you know, I have this
 18 defense or you are limited in these matters
 19 in proving your case or in your damages.

20 Their eighth affirmative defense simply
 21 says this is nothing but a defamation suit.
 22 That's not an affirmative defense. That is
 23 a legal proposition which they rely on to
 24 provide the predicate for the sixth and
 25 seventh affirmative defenses. But it is

1 whether or not it was a matter of public
 2 concern was not relevant.

3 The case that they seemingly rely on is
 4 the Nodar case, which is a Florida case
 5 where the parent went to the board -- the
 6 school board to speak out against a teacher
 7 that he believed was not properly preparing
 8 the students, not properly teaching, and was
 9 harassing his son.

10 That was a public forum. It was an
 11 executive branch, not a judicial branch.
 12 And all that the Florida Supreme Court held
 13 was in that context -- because it was a
 14 matter of public concern in the appropriate
 15 public forum -- there was a qualified
 16 privilege, and the malice would not be
 17 presumed from the defamatory statements.

18 Now, again, that was a defamation suit.
 19 It was nothing about malicious prosecution.
 20 But as Justice Scalia noted in his
 21 concurring opinion in the Kalina case,
 22 malicious prosecution has the qualified
 23 privilege built into it, because we have to
 24 prove not only a lack of probable cause, but
 25 we have to prove malice, and we do not get a

1 nothing but a statement of a legal
 2 proposition. It is not a defense.

3 The last affirmative defense claims
 4 that there are known procedures that this
 5 Court could put in place that could protect
 6 Epstein's due process rights in the context
 7 of the punitive damages claims. That's not
 8 an affirmative defense. That's a
 9 constitutional challenge in the proceedings
 10 of this Court. While I'm not saying they
 11 can't raise constitutional challenges, it is
 12 not an affirmative defense.

13 I would add they haven't specified a
 14 single thing that has happened thus far in
 15 the context of punitive damages that has
 16 deprived Mr. Epstein of any due process
 17 rights.

18 And I gave a brief summary in our
 19 response to all the protections that have
 20 been established in the case law, in the
 21 statutes, for protecting due process rights.

22 And until and unless they come to you
 23 with a colorable argument that those
 24 procedures are inadequate, there's nothing
 25 for you to do in response to that generic

1 assertion that Mr. Epstein could never have
 2 his due process rights protected in the
 3 context of the punitive damages award. But
 4 what is clear is it's not an affirmative
 5 defense at all.

6 So, trying to parse out Debrincat to
 7 say that the litigation privilege only
 8 applies to one element of the malicious
 9 prosecution claim, I submit, is facially
 10 wrong in light of the complaint. And if
 11 they believe that Debrincat, which concludes
 12 by saying unequivocally that the litigation
 13 privilege does not apply to malicious
 14 prosecution cases, they had an obligation
 15 because they were a tag-along case.

16 And the Florida Supreme Court, after
 17 issuing Debrincat, issued an order in our
 18 case saying that Epstein should show cause
 19 why Debrincat does not control. And in
 20 response, Epstein conceded that it did
 21 control.

22 There is no way to parse out anything
 23 in Debrincat which would create entirely new
 24 law in Florida about parsing out elements of
 25 malicious prosecution for either purposes of

1 forcing the plaintiff into a position of
 2 having a defamation claim or of taking out
 3 specific elements of a malicious prosecution
 4 claim and saying, Oh we have defamation
 5 defenses to these.

6 The falsity of the statements in the
 7 complaint are entirely different from a
 8 publication, because it is the act of
 9 triggering the judicial mechanism forcing my
 10 client to defend, litigate, expend funds.
 11 And the falsity of those statements goes to
 12 lack of probable cause. It goes to malice.
 13 And it is an element that we can prove
 14 caused harm and we should get compensatory
 15 damages.

16 Again, they cited no case. They relied
 17 solely on Debrincat, and it is an extremely
 18 thin reed upon which to entirely change the
 19 law of malicious prosecution. And I believe
 20 that Your Honor should deny the motion based
 21 on it being untimely with no explanation.

22 None of these cases are new. Debrincat
 23 is the only one that's within the last few
 24 years. But they had time to raise that.
 25 All the others are established law. It just

1 doesn't apply here.

2 THE COURT: Let me ask you to explain
 3 for me, if you will, the issue of futility.
 4 Because usually, because of Florida's policy
 5 on liberality of amendments even at trial --
 6 cases after trial that allows for amending
 7 the pleadings -- the amendment is typically
 8 allowed. And then the affirmative defenses
 9 are attacked, traditionally, by a motion to
 10 strike.

11 Here your arguments on behalf of your
 12 client are that these amendments are
 13 essentially futile in the sense that I
 14 analogize it with a cause of action brought
 15 by a plaintiff in a given case where the
 16 plaintiff is alleging some type of --
 17 attempting to allege some type of cause of
 18 action that makes no legal sense, or it is
 19 barred by the existing precedent so as to
 20 make any amendments futile.

21 I would suspect that that same analogy
 22 could apply here, albeit, this is the first
 23 effort, at least as to these affirmative
 24 defenses, that have been made.

25 But are you suggesting that under no

1 reading of law and the facts that apply here
 2 that it would be either amendable or that
 3 any potential amendment based on these facts
 4 and the laws that have constituted these
 5 proposed affirmative defenses would be
 6 futile?

7 MR. BURLINGTON: You are correct that
 8 normally when affirmative defenses are
 9 initially asserted in a timely fashion, that
 10 the means of challenging their legal
 11 sufficiency is a motion to strike.

12 When a motion to amend is presented --
 13 especially this late in the game -- it would
 14 be a waste of judicial resources for you to
 15 allow the amendment knowing that, as a
 16 matter of law, those defenses are invalid.

17 And there are cases -- I'm not sure
 18 they're the ones cited in our response --
 19 but I have cited cases on futility where, if
 20 they're legally invalid, they're necessarily
 21 futile.

22 And to go through the motion of
 23 allowing them to amend, requiring us to move
 24 to strike, allowing them to respond when the
 25 legal sufficiency is addressed in these

1 memos --

2 They cited case law in their
3 affirmative defenses, themselves, trying to
4 justify them. So the futility is
5 different -- not different, but the need to
6 do a motion to strike is different when the
7 amendment is made.

8 When you come to the court and seek it
9 to exercise its discretion to allow an
10 amendment, if it is legally invalid there's
11 no reason for the court to allow it, because
12 it would be futile. And that's one of three
13 ways of attacking the motion to amend, as
14 discussed in all the case law.

15 Otherwise, to say it would be futile, I
16 guess, we would have to get into the factual
17 analysis of where the facts don't support
18 it. But there isn't much difference between
19 saying the facts don't support it and this
20 doesn't apply as a matter of law to this
21 cause of action.

22 So I believe you are fully authorized
23 to look at the merits of these claims, which
24 have been argued in the motion and the
25 response. And they've certainly had an

1 opportunity today to argue what they thought
2 was the legal validity.

3 So to simply put that off and have
4 another hearing on it when the question here
5 is, Do you allow amendments, which I believe
6 are clearly not valid to a malicious
7 prosecution cause of action. So I believe
8 you are authorized to do it on that basis as
9 well.

10 THE COURT: Thank you, Mr. Burlington.
11 I appreciate your written and oral
12 presentation, as well, Mr. Link.

13 MR. SCAROLA: May I add just a little
14 bit to that?

15 THE COURT: I will give you a couple
16 minutes.

17 MR. SCAROLA: Thank you very much, sir.

18 THE COURT: After Mr. Scarola,
19 Ms. Rockenbach, if you want to add something
20 you are free to do so as well.

21 MS. ROCKENBACH: Thank you, Your Honor.

22 MR. SCAROLA: I don't think that it
23 will take a couple minutes.

24 It was one aspect --

25 THE COURT: Less than that?

1 MR. SCAROLA: Yes, sir.

2 There was one aspect of Mr. Link's
3 argument that I found extremely confusing.
4 And maybe it's just some --

5 MR. LINK: Your Honor, you mind if I
6 move so I can --

7 THE COURT: Feel free.

8 MR. SCAROLA: -- some inability on my
9 part to comprehend the argument. But he
10 told us repeatedly that Edwards seeks to
11 prove the falsity of the allegations of the
12 complaint instead of proving there was no
13 probable cause to file the complaint. I
14 think he repeated that statement at least
15 three times. And quite frankly, I have no
16 idea what that means.

17 In order to prove there was no probable
18 cause to file the complaint, we must look at
19 the factual allegations in the complaint and
20 we must demonstrate that there was no
21 probable cause to file those specific
22 factual allegations. That is, we must prove
23 the factual allegations were false, and we
24 must prove that there was no reason to
25 believe that they were true. This wasn't a

1 good faith mistake.

2 So the issues are identical. And what
3 they were attempting to do by way of this
4 motion to amend is to get right back to
5 where they were arguing last week, and that
6 is, they don't want to ever have to defend
7 against the claim that Bradley Edwards
8 fabricated false charges against Jeffrey
9 Epstein. They don't want to focus on that
10 at all. And this is one more means by which
11 to attempt to reargue that same position.

12 THE COURT: Or fabricated false claims
13 against Jeffrey Edwards (sic) or --

14 MR. SCAROLA: Jeffrey Epstein.

15 THE COURT: Fabricated false --

16 MR. SCAROLA: Edwards fabricated false
17 claims against Epstein.

18 THE COURT: Correct.

19 MR. SCAROLA: We will help each other
20 out with that.

21 THE COURT: Or vice versa for that
22 matter, that Epstein fabricated false claims
23 against Edwards, meaning, I am still not
24 sure where the defendant in the malicious
25 prosecution claim, Mr. Epstein, stands as to

1 that issue, as to whether or not he's
2 conceding or not conceding.

3 MR. SCAROLA: That has been
4 scrupulously avoided by the other side, Your
5 Honor. They don't want to face that issue
6 or even acknowledge it exists. I agree with
7 Your Honor.

8 THE COURT: Thank you, Mr. Scarola.

9 Mr. Link, couple things that I would
10 like you to focus on. First is that -- I
11 appreciate your bringing it to my attention,
12 and I have heard this before -- about the
13 punitive expert's testimony on behalf of
14 Mr. Edwards, that his research has revealed
15 whatever number of instances whereby
16 Mr. Edwards' and Mr. Rothstein's names have
17 been linked, presumably as a result of
18 Mr. Epstein's conduct.

19 MR. LINK: Yes, Your Honor.

20 THE COURT: I haven't read it very
21 closely. At this point I don't know how
22 much of that testimony is going to get in.
23 But irrespective of that, what
24 Mr. Burlington has emphasized and what the
25 Court clearly is under the impression as to

1 as it relates to a traditional defamation
2 claim, perhaps.

3 Some of these affirmative defenses,
4 quite frankly, in handling defamation claims
5 on numerous occasions in the past, I have
6 never seen before. I never try to stifle
7 creativity. But at the same time, we have
8 to take into account, not only judicial
9 resources, but what -- the essential
10 argument of Mr. Burlington boiling it down
11 to its very essence is, you can't fit a
12 square peg into a round hole. And that is,
13 that the bulk of these affirmative defenses,
14 because they deal with defamation, one, are
15 not pertinent. Two, even if they were, it's
16 not a defamation claim.

17 I certainly do not plan and will not
18 try a defamation claim. And also, again,
19 even if these could be conceivably construed
20 as defamation claims, they don't pass legal
21 muster.

22 Some of them, such as the affirmative
23 defense regarding the petitioning of the
24 government, has, in my view, absolutely no
25 application to this case, because if it did,

1 its utilization, is not to prove up any
2 other element of the malicious prosecution
3 claim except for damages.

4 For example, an affirmative defense to
5 that aspect of the claim could potentially
6 be that Mr. Edwards failed to mitigate his
7 damages by virtue of his own zeal in seeking
8 publicity for his representation of Mr. --
9 for his representation of the alleged
10 victims and the plaintiffs in those cases
11 against Epstein, and therefore, cause much
12 of his own damages by exercising that zeal.

13 That may constitute an affirmative
14 defense as to the damage claim, because just
15 like a simple negligence action is
16 concerned, damages are a necessary element,
17 similar to the questions I had of you last
18 week when I asked what were Mr. Epstein's
19 damages as a result of his filing of the
20 initial suit against Rothstein, Edwards and
21 L.M., as related to the factoring of those
22 cases.

23 So, there's a distinction of importance
24 that I can see here as it pertains to the
25 affirmative defenses that have been asserted

1 it would have application to any lawsuit
2 just about that I could conceive of that
3 would be brought by any person, by any
4 plaintiff, by any counter-plaintiff.

5 The application is completely an
6 opposite to what we're doing here. This is
7 not redressable by virtue of petition to
8 government, as are and as were, particularly
9 at the time of those two cases, Noerr and
10 Pennington, where there were issues of
11 anti-trust violations and the testing of
12 whether or not anti-trust laws were in fact
13 being violated. And the government's --
14 obvious because of the Sherman Act -- the
15 government's obviously, because of the
16 Sherman Act -- interest in protecting
17 against anti-trust violations. So there was
18 that nexus that was clearly prevalent there.

19 So I really don't need further argument
20 as to the fifth affirmative defense.

21 The sixth affirmative defense deals
22 with the limited public figure. We haven't
23 really talked about that from your
24 standpoint -- your position as to that in
25 light of the Gertz decision.

1 MR. LINK: Yes. We believe that if
 2 defamatory statements are going to be the
 3 basis for liability and for damages so that
 4 we're moving in absolute litigation
 5 privilege from allegations in the complaint,
 6 then the fact that Mr. Edwards is a quasi-
 7 public figure that puts himself out there,
 8 that advertises, that speaks about these
 9 issues, that issues press releases, talked
 10 to the press -- should come in as an
 11 affirmative defense in this case.

12 THE COURT: How do you get around Gertz
 13 essentially saying precisely the opposite,
 14 that a lawyer -- even where a lawyer
 15 represents a high-profile client? Here
 16 these aren't high-profile clients.

17 My common-sense thinking -- although
 18 really not a part of the decision here -- is
 19 that outside of South Florida, and had
 20 Mr. Rothstein not committed the heinous
 21 crimes that he's been convicted for in
 22 serving a sentence somewhere in the
 23 neighborhood of 50 years, Edwards would have
 24 been off the radar. There would have been
 25 no real issues, other than his connection

1 with Mr. Epstein.

2 Some may argue that Mr. Epstein is far
 3 more of a public figure than Mr. Edwards is
 4 under the analysis you have suggested.

5 MR. LINK: He may very well be, Your
 6 Honor.

7 THE COURT: But that's not the issue
 8 here. I don't see how Gertz, with the plain
 9 meaning of the opinion, and the fact that
 10 the attorney in Gertz was in fact
 11 representing a high-profile client and there
 12 was afforded immunity -- which wouldn't have
 13 application here whatsoever -- I don't see
 14 the basic fundamental issue being answered
 15 or even arguable.

16 MR. LINK: If I can take one shot at
 17 it, Your Honor.

18 THE COURT: Sure.

19 MR. LINK: I think the difference is
 20 the fact that you represent a high-profile
 21 client does not make you a quasi-public
 22 figure. It's the steps and actions that you
 23 take as a result of that.

24 So, the fact that the three plaintiffs
 25 that Mr. Edwards represented were not

1 high-profile folks does not mean that he
 2 didn't voluntarily put himself out there and
 3 create an image and a reputation for himself
 4 and put himself out there in a public way.

5 There are easy examples. I represent a
 6 high-profile client, Mr. Epstein. After the
 7 hearing, the press came up, I didn't talk to
 8 the press. I didn't put myself out there.
 9 Other lawyers will do that. They will give
 10 press releases.

11 Mr. Edwards went even beyond that. He
 12 used these cases to promote himself in a way
 13 that goes beyond simply representing a
 14 client.

15 MR. SCAROLA: Your Honor, excuse me.
 16 There is no record evidence to support that
 17 assertion at all. Absolutely none.

18 THE COURT: I appreciate that. Thank
 19 you, Mr. Scarola.

20 You may proceed.

21 MR. LINK: So there is a distinction.
 22 Simply representing a high-profile client
 23 does not make you a quasi-public figure.
 24 But doing things that put yourself out
 25 there -- contacting the press, giving

1 interviews, giving speeches, making
 2 yourself -- putting yourself out there as a
 3 specialist in this particular area and
 4 seeking press and accolades does -- that's
 5 the distinction.

6 So the fact that I'm representing
 7 Mr. Epstein, who may be a more well-known
 8 figure, doesn't mean I have done anything to
 9 assert myself into the public view. That's
 10 the distinction I would draw, Your Honor.

11 THE COURT: Anything else you would
 12 like to speak to?

13 MR. LINK: Yes, if I can. I just want
 14 to touch on a couple points that
 15 Mr. Burlington made and a point Mr. Scarola
 16 made.

17 Here is the key to this and these
 18 affirmative defenses. And Your Honor asked
 19 a great question. You asked Mr. Burlington
 20 if any cases -- any of the malicious
 21 prosecution cases say that you can take a
 22 false statement -- allegedly a false
 23 statement from a complaint -- and use that
 24 to demonstrate lack of probable cause or
 25 damages. And he pointed to the Mancusi

1 case.

2 Your Honor, we looked at this case last
 3 time that we were here. It's a case that
 4 Your Honor pointed out, I believe, that
 5 talks about the mixed question of fact of
 6 law and the probable cause.

7 There's no discussion of damages other
 8 than punitive damages in the case. It sets
 9 forth the standards that your court told us
 10 about and recognized, which is, if there's
 11 no dispute as to the facts that were relied
 12 on in making the decision to bring a
 13 lawsuit, then it's up to you. And I said
 14 Your Honor may decide enough or not enough.
 15 It's your call. It's not the jury's
 16 decision. That's what Mancusi says.

17 There is not a case that we have
 18 seen -- and we looked at about 65 -- 67
 19 cases, Florida cases -- that discussed that
 20 you can use an allegation in the complaint
 21 to either show lack of probable cause, based
 22 on the truth or falsity, or use it to
 23 establish damages. And here is why.

24 Mr. Burlington doesn't think that the
 25 Supreme Court case answers the question, but

1 MR. LINK: Yes. But the "continued"
 2 has been defined very carefully. Here is
 3 what the court said. The court says that
 4 continued means this: One, if I'm a new
 5 lawyer coming in, I don't have a defense if
 6 there was not probable cause.

7 If I come in, don't do my homework and
 8 I continue with the proceeding, that's one
 9 aspect.

10 The second aspect is, I may have
 11 probable cause when I start, but if during
 12 the course of the lawsuit something comes to
 13 my attention that makes me now conclude that
 14 what I thought was true is not true, I have
 15 to stop, Your Honor. I don't get to keep
 16 going. But it has nothing to do with the
 17 allegations of the complaint, what I say
 18 during my deposition, what you say during
 19 the case, what the other lawyer say during
 20 the case.

21 And if you look at every one of these
 22 elements -- it's really important to look at
 23 every one of these elements, except for
 24 malice. Use of the words the original
 25 proceeding.

1 I think it does. And here is what I want to
 2 focus the Court on. It is not, Your Honor,
 3 simply the first element of the malicious
 4 prosecution element that focuses on civil
 5 judicial proceeding. This is from the
 6 Supreme Court case.

7 Every element, if you look -- an
 8 original civil judicial proceeding -- it
 9 doesn't say count, allegation, complaint.
 10 It talks in the big picture. Why? Because
 11 once the lawsuit is filed, that's the
 12 damage, the filing of the lawsuit, not what
 13 you plead in it. That's protected by the
 14 litigation privilege.

15 The present defendant was the legal
 16 cause of the original proceeding. Second
 17 element uses the term original proceeding.
 18 Third element: determination of the original
 19 proceeding.

20 THE COURT: You think that the
 21 terminology, "an original criminal or civil
 22 judicial proceeding against the present
 23 plaintiff was commenced or continued," seems
 24 to bring in, at least arguably, more than
 25 just the initial complaint?

1 Six, the plaintiff suffered damage as a
 2 result of the original proceeding. Again,
 3 that's the filing of the complaint.

4 And you look at Florida's jury
 5 instructions --

6 Mr. Scarola, I don't have them, but
 7 they are the standard jury instructions.

8 -- and look at damages, 406.12, Your
 9 Honor, on malicious prosecution, you won't
 10 see anything in there about the publication
 11 of a false statement or damage caused by a
 12 false statement.

13 Contrast that with defamation, which it
 14 specifically says if you find that there was
 15 a false statement, it's a whole different
 16 standard for damages.

17 THE COURT: Again, we are going to need
 18 get to that bridge when we come to it. But
 19 the malicious prosecution damages state,
 20 quote, If you find for defendant, you will
 21 not consider the matter of damages. If you
 22 find for the plaintiff, you should award the
 23 plaintiff an amount of money that the
 24 greater weight of the evidence shows would
 25 fairly and adequately compensate him for

1 such loss, injury, damage as the greater
 2 weight of the evidence shows was caused by
 3 the institution -- and then it also
 4 parenthetically states -- continuation of
 5 the proceeding complained of.

6 MR. LINK: So it depends on the focus.
 7 Mr. Scarola has not said -- I don't think --
 8 he has always said we're focused on the
 9 initial filing. There's not probable cause
 10 for the initial filing. That's what he has
 11 told us. He has not said there was probable
 12 cause at the beginning, Your Honor, but down
 13 the road Mr. Epstein learned something and
 14 he should have stopped then.

15 So based on exactly what you read, it
 16 focuses on, was caused by the institution of
 17 it, the filing of it.

18 THE COURT: Continuation is one of the
 19 words that's utilized right there in bold,
 20 black print.

21 MR. LINK: If he was arguing that it
 22 was continuation to cause damages. He's
 23 not. He's not, I don't believe -- unless
 24 he's changed his mind.

25 THE COURT: Is that true?

1 want to get into repetition. So if there's
 2 anything you want to say to rebut
 3 Mr. Burlington's argument or his written
 4 presentation, feel free to do so.

5 MR. LINK: As I have handed the court
 6 the Mancusi case, Your Honor -- which does
 7 not say anything about statements or
 8 allegations in the complaint or damages
 9 other than punitive damages -- the Supreme
 10 Court tells us that there is still a
 11 litigation privilege afforded to every
 12 litigant. The narrow exemption has to do
 13 between when you make the decision to
 14 institute.

15 Mr. Scarola said that he sees them as
 16 the same thing. They are very different.
 17 One draws a line when you file the lawsuit.
 18 And what's on this side of the line and
 19 before the lawsuit is filed is what is in
 20 your mind when you make the decision. And
 21 that is not protected.

22 But what you plead in the complaint,
 23 and the truth and falsity of those
 24 allegations is absolutely protected. And
 25 that's what the Supreme Court just told us.

1 MR. SCAROLA: No, Your Honor. It is
 2 not true. We contend there was no probable
 3 cause to initiate this proceeding, there was
 4 no probable cause to continue the
 5 proceeding. The initiation and continuation
 6 of the proceeding caused damage to Bradley
 7 Edwards, both because no probable cause ever
 8 existed. So it was both initiated and
 9 continued in the absence of probable cause.

10 MR. LINK: Your Honor, that only makes
 11 sense. If you think what about Mr. Scarola
 12 just said, if it's not probable cause when I
 13 filed it and I continue with the lawsuit,
 14 then there was never probable cause.

15 But the continuation isn't I filed it
 16 and it should have been eliminated that day.
 17 The second day after the lawsuit it's
 18 already been continued.

19 THE COURT: I will give you two minutes
 20 to wrap up. We had planned on 40 minutes.
 21 We are now going on 55. But again, I want
 22 to give both sides the opportunity --

23 MR. LINK: I appreciate that.

24 THE COURT: I have read the materials
 25 and I have heard the arguments. I don't

1 Thank you, Your Honor.

2 THE COURT: All right. Thank you,
 3 Mr. Link. The Court is prepared to rule. I
 4 am going to go through it one step at a time
 5 and proceed through the fifth through the
 6 ninth affirmative defenses.

7 The Court finds, as far as the fifth
 8 affirmative defense is concerned, that the
 9 pleading made here has no relationship
 10 whatsoever to the case at bar. This is not
 11 a forum of petitioning government for
 12 redress. The Court has stated, and in
 13 agreement with Edwards' position, that
 14 neither Pennington nor Noerr, N-O-E-R-R,
 15 have any application to this claim any more
 16 than it would have to any generic claim
 17 brought by any plaintiff.

18 This is not an anti-trust case. This
 19 is not a case where the government
 20 involvement is either directly or indirectly
 21 at issue as it relates to the affirmative
 22 defense generally claiming that this is a,
 23 quote, forum of petitioning government for
 24 redress, end quote. It is simply
 25 inapplicable. Any amendment along those

1 grounds will be futile.

2 As far as the sixth affirmative
3 defense, the Court finds that, as a matter
4 of law that the Gertz case speaks to this
5 issue broadly and specifically, and does not
6 place Mr. Edwards in the position of a
7 general or limited-purpose public figure.
8 Hence, any affirmative defenses that rely
9 upon that theory are, again, completely,
10 entirely inapplicable to the matters that
11 are addressed in this case.

12 The seventh affirmative defense fails
13 because of the same reason. Additionally,
14 the suggestion that, in accordance with the
15 First and Fourteenth Amendments of the
16 United States Constitution and Article I,
17 Section 4 of the Florida Constitution,
18 Edwards may not recover presumed or punitive
19 damages without clear and convincing
20 evidence that Epstein knew of the falsity of
21 the claims that he made against Edwards were
22 in reckless disregard of the falsity of
23 these claims would reconstitute argument and
24 a denial, as opposed to a confession and
25 avoidance as required by Florida law so as

1 haven't read in detail the proposed expert's
2 report or analysis or have seen his
3 deposition transcript -- but the Court will
4 certainly be amenable to motions that may
5 limit that testimony so that we do not blur
6 the fine line between what may be construed
7 as defamation and malicious prosecution.

8 But certainly the Court understands --
9 and was under the impression even before
10 reading the brief by Mr. Burlington -- that
11 the claims here were one of damages as it
12 relates to this -- allegedly false
13 statements or statements that linked Edwards
14 and Rothstein together, which, if
15 attributable to Mr. Epstein, which are
16 brought before the jury, they could
17 constitute damages.

18 So again, there's no applicability to
19 defamation. Its generic, general manner in
20 which the defense is phrased would not pass
21 legal muster as well, and any attempt to
22 amend would be futile in this Court's view
23 because of the distinction legally between
24 defamation and malicious prosecution.

25 As far as the ninth affirmative defense

1 to constitute a valid affirmative defense.

2 Again, it primarily relies on Gertz,
3 which as I found earlier, is contrary
4 directly to the position espoused by
5 Mr. Epstein. And the Gertz decision, as we
6 all know, is a United States Supreme Court
7 decision found at 418 US 323, 1974.

8 The eighth affirmative defense
9 specifically addresses defenses to a
10 defamation claim. It states, quote,
11 Edwards' claims are nothing more than
12 defamation claims which are barred by
13 defenses applicable to defamation claims as
14 set forth in the defenses above.

15 A plaintiff may not avoid defenses that
16 apply to defamation actions by
17 characterizing them as torts which are not
18 subject to those restrictions, as the Court
19 pointed out in agreeing with the position
20 taken by Edwards, that is, that that is not
21 a defamation claim.

22 This will not be tried as a defamation
23 claim. And any issues as to the utilization
24 of Mr. Edwards' name in print linking to
25 Mr. Rothstein and presumably -- again, I

1 is concerned, again, in agreement with the
2 position taken by Edwards, I find that the
3 built-in remedies that are already
4 established in Florida law will provide any
5 safeguards that are sought by Mr. Epstein as
6 it relates to the punitive damages. And
7 merely a recitation of the law does not
8 constitute confession or avoidance as far as
9 the Court is concerned.

10 It would be similar to saying words to
11 the effect that the rules of evidence shall
12 apply to this case. That is, that there's
13 an application of the Fifth and Fourteenth
14 Amendments of the United States Constitution
15 and Article I, Section 9 of the Florida
16 Constitution guaranteeing due process.

17 In any case where punitive damages are
18 brought, those built-in due process laws --
19 whether decisional or statutory,
20 constitutional or otherwise -- are all built
21 into the already existing Florida law. And
22 the ninth affirmative defense is
23 superfluous, and it would be no reason to
24 allow the amendment. It's simply a
25 statement of the law and not a confession of

1 avoidance.

2 So the Court finds, thereafter, that
 3 each of the affirmative defenses would
 4 constitute -- the improper affirmative
 5 defenses would not be subject to amendment
 6 because of futility. The Court has
 7 addressed each of these affirmative defenses
 8 in requisite detail finding that they are
 9 either in opposite, that they are contrary
 10 to established law and thus would be futile
 11 to try to amend, particularly where I
 12 referenced the Gertz decision as well as the
 13 anti-trust cases that were found to be
 14 completely and entirely in opposite to the
 15 claims made here.

16 This is not a defamation case. It will
 17 not be treated as such. It has been
 18 represented in open court by Edwards'
 19 counsel that any issues regarding the links
 20 between Rothstein and Edwards are going to
 21 be used solely for damages purposes. And
 22 the Court has not been asked at this
 23 juncture to limit any such testimony, but is
 24 amendable to taking up any motions in that
 25 regard and will treat those at such time.

1 Again, the ninth affirmative defense is
 2 simply a recitation of law that is already
 3 built in and well-known and even conceded by
 4 the parties is not a confession of
 5 avoidance, thus making each futile in terms
 6 of attempting to amend.

7 I would ask for an order confirming the
 8 Court's ruling, please, from the Edwards
 9 side.

10 Anybody needs a break?

11 MR. SCAROLA: We are ready to proceed,
 12 Your Honor, if the Court is ready.

13 Your Honor, we had started off last
 14 week dealing with issues with respect to the
 15 Fifth Amendment. Your Honor had asked us
 16 to -- or we had actually volunteered to
 17 specifically identify the limited questions
 18 that we would wish to place before the jury.
 19 We volunteered that we would identify the
 20 limited questions that we wanted place
 21 before the jury.

22 In light of Your Honor's statement that
 23 we should be focusing only on the civil
 24 claims against the three plaintiffs
 25 represented by Mr. Edwards, we have done

1 better place to pick back up on the pending
 2 motions is precisely where we left off on
 3 November 29th, which was Exhibit 9 in
 4 Mr. Edwards' Exhibit list.

5 THE COURT: I am certainly more
 6 prepared as well to go through that. I
 7 would like to get a chance to read it.

8 As you know, I do the best I can to try
 9 to read everything that comes in and
 10 familiarize myself with the context. So I'm
 11 going to sustain Ms. Rockenbach's
 12 suggestion and objection to going forward
 13 with this particular issue at this time.

14 Let's go back to the evidentiary
 15 issues. I am also prepared to discuss, as
 16 well -- and I don't know whether it's still
 17 on the table -- I presume it is -- it's the
 18 automatic stay issue.

19 So if there's any reason that
 20 Mr. Burlington needs to be here -- because I
 21 believe there's been some request that one
 22 of the attorneys -- I presume to be
 23 Mr. Burlington -- had to leave, which is why
 24 they wanted to speak about this affirmative
 25 defense issue and the denial of Epstein's

1 request to amend his answer.
 2 MR. SCAROLA: Mr. Burlington, Your
 3 Honor, does not need to be here for the
 4 automatic stay issue. We wanted, for
 5 purposes of conserving his time, to be able
 6 to address the one matter that he would be
 7 arguing today, and we have done that.

8 He may or may not be able to stay any
 9 longer, but he is not required to be here
 10 for the other matters.

11 With regard to going through the
 12 exhibit list, I had proposed to opposing
 13 counsel, and I think I managed -- I think I
 14 referenced this with the Court also during
 15 the hearing -- that I am prepared to agree
 16 that I will not reference any of those
 17 specific exhibits that the defense
 18 identifies as a problem in opening
 19 statement. And I won't -- I won't reference
 20 them with a witness unless and until Your
 21 Honor has made a determination that it is
 22 appropriate for us to do so.

23 To go through every listed exhibit and
 24 obtain from Your Honor a ruling that
 25 obviously is not going to do any more than

1 remain law here in Florida -- but that's why
 2 the overwhelming cases on the Daubert issue
 3 speak to actually disallowing Daubert
 4 motions, for example, from being heard
 5 during the trial for the very purpose that I
 6 just cited. And that is, that these folks
 7 are coming in as volunteers, often
 8 reluctantly, taking significant amount of
 9 time away from their businesses, jobs,
 10 families to be here with us, should not have
 11 their time wasted if we can get done on the
 12 front end what may not need to be done
 13 during trial.

14 So I'm comfortable with going through
 15 the exhibits, because there may be some
 16 apparent -- at least from my vantage
 17 point -- reasons why some exhibits should or
 18 should not be admitted or not admitted.

19 And as I pointed out -- and you are
 20 correct, Mr-Scarola, in your global
 21 observation, that because the law, more
 22 recently than in the past, has, as I earlier
 23 indicated on November 29th, that the
 24 appellate courts recognize what they term
 25 the fluid nature of motions in limine, which

1 what I am prepared to concede to do
 2 voluntarily, respectfully doesn't make any
 3 sense to me. I don't know why we are going
 4 through this process, because the most Your
 5 Honor could do would be to say, I will give
 6 a preliminary indication. At such time as
 7 the evidence is offered, we will make a
 8 determination as to whether a predicate
 9 exists to admit it or not. So I'm willing
 10 to do that.

11 I think we are absolutely wasting our
 12 time to go through the large number of
 13 exhibits that you've identified for purposes
 14 of getting to exactly the point where I am
 15 willing to move voluntarily.

16 THE COURT: Well, couple things, and
 17 that is this. We are always mindful -- and
 18 I am speaking about now trial judges -- but
 19 attorneys as well -- I know any good
 20 attorney, such as all who are sitting in
 21 this room, are certainly well aware of
 22 ensuring that the jury's time is spent in an
 23 efficient manner. That's why the
 24 overwhelming federal case law -- because
 25 Daubert -- we don't know if it's going to

1 is essentially what we're dealing with here
 2 when we talk about exhibits.

3 The Court will have the opportunity --
 4 and should have the opportunity that if a
 5 contested exhibit comes to fruition during
 6 the trial, to be able to either augment its
 7 decision, change its mind, or confirm the
 8 decision made pretrial.

9 But I disagree that it is a waste of
 10 time because a lot of the arguments can be
 11 made now. I can digest those arguments. I
 12 won't forget, and I won't forget the context
 13 of what those arguments are in relation to
 14 the exhibits. So I would like to proceed,
 15 as recommended by Epstein's counsel, to go
 16 through what we can go through.

17 We will do it in a little more of an
 18 expeditious fashion, and that is, if I find
 19 there's something that really does need
 20 absolutely, without question, context for me
 21 to make that decision, then I will indicate
 22 to you that rather quickly in that regard so
 23 we don't waste too much time.

24 But I think we can go through those
 25 with some comfort to know at least what the

1 Court is thinking from that standpoint,
 2 perhaps ruling at this point, with the
 3 caveat that, consistent with motions in
 4 limine and the recognition by the appellate
 5 courts -- much to my delight -- that there
 6 are often situations where situations will
 7 change and context is introduced to cause
 8 the Court to, perhaps, vary its decision in
 9 some regard. But that is afforded to me
 10 once trial is underway.

11 MR. LINK: Your Honor, before we start,
 12 can I take you up on your three-minute break
 13 opportunity, please?

14 THE COURT: Sure. Not a problem. Take
 15 a few minutes. Come on back in about five
 16 minutes, please.

17 (A recess was had 11:16 a.m. - 11:24 a.m.)

18 MR. SCAROLA: May I make a procedural
 19 inquiry, Your Honor?

20 THE COURT: Yes.

21 MR. SCAROLA: I assume that we are
 22 starting on page 23 of Jeffrey Epstein's
 23 revised omnibus motion in limine. Is that
 24 correct?

25 THE COURT: That's what I am

1 we were reviewing.

2 THE COURT: I actually have it.
 3 Thanks.

4 MS. ROCKENBACH: You do. Okay.
 5 Our objections were filed November 15.
 6 That's obviously a separate document.

7 THE COURT: That, I will take.
 8 MR. LINK: Your Honor, they are listed
 9 in the motion starting on page three.

10 THE COURT: I thought those were just
 11 exemplars.

12 MR. LINK: In the omnibus motion in
 13 limine, it actually lists, I think, every
 14 single one of the exhibits. They are
 15 identified in here. So they are in two
 16 places.

17 THE COURT: Page three of the revised
 18 omnibus motion in limine?

19 MS. ROCKENBACH: Your Honor, it's the
 20 original omnibus --

21 THE COURT: Is that part of the --
 22 MR. SCAROLA: If we are working with
 23 the witness list -- I mean with the exhibit
 24 list, we will just work with the exhibit
 25 list.

1 understanding.

2 Ms. Rockenbach?

3 MR. SCAROLA: That's where we left off.

4 MS. ROCKENBACH: Yes. The exhibit
 5 section, which should be letter B.

6 MR. SCAROLA: Well, the specific
 7 exhibits that you are objecting to are
 8 identified in this motion, correct?

9 MS. ROCKENBACH: Actually, we
 10 stopped -- we left off at Mr. Edwards'
 11 exhibit list and we are on number nine.

12 The revised omnibus motion in limine
 13 identified examples of the objections that
 14 we had. And we have listed and filed our
 15 objections to the exhibit list.

16 THE COURT: Where is the list of
 17 exhibits?

18 MR. SCAROLA: If you have an extra
 19 copy, I need one also, please. I gave mine
 20 to Sonja at the end of the last hearing.
 21 And I was assuming we were going to be
 22 basing this discussion on the motion.

23 MS. ROCKENBACH: Your Honor, may I
 24 approach? I have a copy for Mr. Scarola.
 25 It is Mr. Edward's amended exhibit list that

1 THE COURT: Let's do that.

2 MR. LINK: That works for us, Your
 3 Honor.

4 THE COURT: Thanks.

5 MR. SCAROLA: So I assume we are going
 6 to take these one at a time?

7 THE COURT: Yeah.

8 MS. ROCKENBACH: Your Honor, the next
 9 one that we were on was number nine,
 10 Mr. Epstein's flight logs -- if I may
 11 approach, I would like to give Your Honor
 12 what was provided to my office from
 13 Mr. Scarola. And it is a sampling, because
 14 I think there were over 200 pages for this
 15 particular exhibit.

16 We've objected on the basis of
 17 relevance, of 90.403, judicial value. And
 18 these are flight logs of my client's planes.
 19 They have no relevance to what is being
 20 tried in this case, which is malicious
 21 prosecution.

22 Mr. Edwards testified that he knew that
 23 his clients were not on my client's plane,
 24 so the flight logs are completely
 25 irrelevant.

1 THE COURT: Okay, Mr. Scarola.
 2 MR. SCAROLA: Yes. Your Honor, one of
 3 the alleged bases for Jeffrey Epstein having
 4 concluded that Bradley Edwards was a knowing
 5 participant in the Rothstein Ponzi scheme is
 6 that the scope of the discovery that Bradley
 7 Edwards was seeking once he became a member
 8 of the Rothstein, Rosenfeldt, Adler firm
 9 expanded to include matters that he was not
 10 previously focusing on and which had no
 11 reasonable basis to lead to the discovery of
 12 admissible evidence.

13 So he alleged that the abusive
 14 discovery that Bradley Edwards engaged in
 15 gave him reason to believe that he was only
 16 doing these things because he was knowingly
 17 supporting the Ponzi scheme.

18 So Bradley Edwards obviously has an
 19 opportunity to explain what he did and why
 20 he did it. Yes, I was seeking discovery
 21 with regard to the airplane flight logs and
 22 who was on the airplane. And the reason why
 23 I did that was because, even though my own
 24 clients were not transported on the plane, I
 25 know that other young women were transported

1 is information than rebuts the assertion by
 2 Jeffrey Epstein that this was an abusive
 3 discovery effort that supported my
 4 conclusion that Bradley Edwards was a
 5 knowing participant in the Ponzi scheme.

6 That's what he alleges. In fact,
 7 portions of the deposition of Bradley
 8 Edwards have already been identified by the
 9 defense as they're intending to introduce
 10 this in evidence before the jury.

11 I have some of those excerpts, if you
 12 Your Honor needs to take a look at them.
 13 They are offering that evidence with regard to
 14 these matters as part of their support for
 15 the lack of Bradley Edwards' probable cause
 16 to conduct this discovery, the assertion
 17 that this was an abuse of discovery process.

18 Now, that's what they alleged in their
 19 complaint. Those specific allegations are
 20 included in the complaint. Those are false
 21 allegations.

22 THE COURT: Show me those allegations
 23 that you are suggesting.

24 MR. SCAROLA: From the complaint, Your
 25 Honor, or from the deposition testimony?

1 on the plane for purposes of prostitution
 2 and sexual abuse. And I can prove that
 3 through the flight logs that list the other
 4 occupants on the airplane, including
 5 children who were being transported by
 6 Jeffrey Epstein.

7 Part of what makes this is a viable
 8 federal claim is the intrastate and
 9 international transportation of children for
 10 purposes of prostitution.

11 The federal law, specifically Federal
 12 Rule 41.5 -- excuse me 415.5(g) -- and I
 13 referenced this in an earlier argument to
 14 the Court -- expressly allows the
 15 introduction into evidence in any case
 16 involving a sexual offense against a child,
 17 the commission of any other sexual offense
 18 against a child.

19 So, I was seeking evidence to prove a
 20 pattern of abuse of children including their
 21 transportation for purposes of prostitution.
 22 And I was doing that through flight logs
 23 that identified these children, flight logs
 24 that identified other witnesses, taking the
 25 depositions of pilots. And so all of this

1 THE COURT: Either way, or both.
 2 MR. SCAROLA: Let me do both, then.
 3 THE COURT: Thanks.
 4 MR. SCAROLA: It's a little bit
 5 difficult for Your Honor to see on these
 6 copies what the defense has designated, but
 7 on page 153 it starts at line two and
 8 continues through -- it looks like the
 9 bottom of that page. And then on 276, 277,
 10 278 and 279, it's most of all of those
 11 pages.

12 Then in the complaint, the allegation
 13 in paragraph 35 -- and I will pause, if Your
 14 Honor would like me to do that, while you
 15 are reading that.

16 THE COURT: If you will, take a moment
 17 please. Thanks.

18 I don't see much as far as what is set
 19 forth in the latter pages of the deposition
 20 of Mr. Edwards that even mentions the plane
 21 or its connection with the alleged underaged
 22 individuals on that plane.

23 Let me look at the complaint.

24 Paragraph?

25 MR. SCAROLA: Thirty-three, 34, 35, 36.

1 THE COURT: Okay. This is directed to
 2 primarily to Mr. Rothstein. It says "and
 3 others." But it says, quote -- paragraph
 4 34 -- Upon information and belief, Rothstein
 5 and others claimed their investigators
 6 discovered that there were high-profile
 7 individuals onboard Epstein's private jet
 8 where sexual assaults took place and showed
 9 D3 -- and possibly others -- copies of a
 10 flight log purportedly containing names of
 11 celebrities, dignitaries and international
 12 figures.

13 Remind me who is D3?

14 MS. ROCKENBACH: One of the investing
 15 companies that was being defrauded by
 16 Rothstein.

17 THE COURT: Okay. I have read those
 18 other ones. Are there any other --

19 MR. SCAROLA: Paragraph 35, Your Honor,
 20 then specifically references the litigation
 21 team. As you recall, the litigation team is
 22 defined as including Bradley Edwards.

23 THE COURT: Thirty-five. For instance,
 24 the litigation team relentlessly and
 25 knowingly pursued flight data and passenger

1 leading irrelevant questions about the
 2 pilots' thoughts and beliefs, which could
 3 only have been asked for the purposes of
 4 pumping -- that word is used in quotes --
 5 the cases and thus by using the depositions
 6 to sell the cases -- or a part of them -- to
 7 third parties, end quote.

8 42(k). Told investigators, as reported
 9 in an Associated Press article, that
 10 celebrities and other famous people had
 11 flown on Epstein's plane when assaults took
 12 place. Therefore, even though none of RRA's
 13 clients claim they flew on Epstein's planes,
 14 the litigation team sought pilot and flight
 15 logs. Why? Again, to prime the investment
 16 pump, enquote, with new money without any
 17 relevance to the existing claims made by RRA
 18 the clients, end quote.

19 MR. SCAROLA: Our position, obviously,
 20 is, Your Honor, that having made those
 21 specific allegations in the complaint,
 22 specifically allegations that no assaults
 23 took place on the plane, Mr. Epstein knew
 24 that that was untrue. He knew that children
 25 were being assaulted on the plane. He knew

1 manifests regarding flights Epstein took
 2 with famous individuals knowing full well
 3 that no underaged women were onboard and no
 4 illicit activities took place. Rothstein
 5 and the litigation team also inappropriately
 6 attempted to take the depositions of these
 7 celebrities in a calculated effort to
 8 bolster the marketing scam that was taking
 9 place. End quote.

10 There's a 40-something that was
 11 mentioned.

12 MR. SCAROLA: I don't know if Your
 13 Honor took a look at 36, but that's a
 14 specific reference to Mr. Edwards and his
 15 conduct of the discovery, and then 42(k).

16 THE COURT: Thirty-six. One of
 17 Plaintiffs' counsel, Edwards, deposed three
 18 of Epstein's pilots, and sought the
 19 deposition of a fourth pilot. The pilots
 20 were deposed by Edwards for over 12 hours,
 21 and Edwards never asked one question
 22 relating to or about E.W., L.M. and Jane Doe
 23 as it related to transportation on flights
 24 of RRA clients on any of Epstein's planes.
 25 But Edwards asked many inflammatory and

1 that there were high-profile individuals who
 2 were present on the plane. And Bradley
 3 Edwards had a reasonable basis to conduct
 4 this discovery pursuant to applicable
 5 Florida law and applicable federal law as
 6 well as, because it was reasonably
 7 calculated to lead to the discovery of
 8 admissible evidence.

9 So the flight logs are clearly relevant
 10 and material for that purpose, as is all of
 11 the evidence with regard to what Mr. Epstein
 12 knew was occurring on those airplanes. And
 13 that directly contradicts what is included
 14 in this complaint as a basis for his belief
 15 that Bradley Edwards was fabricating these
 16 claims.

17 THE COURT: Thanks, Mr. Scarola.

18 MS. ROCKENBACH: Your Honor, may I use
 19 the Elmo for a minute?

20 THE COURT: Sure.

21 MS. ROCKENBACH: I really appreciated
 22 Mr. Link's presentation this morning based
 23 on the law, because after the November 29th
 24 hearing, I went back and I spent a good part
 25 of the weekend looking at malicious

1 prosecution cases, because I thought I must
 2 have missed something. I must have missed
 3 something, because all I hear Mr. Scarola in
 4 court saying is he's going to prove that the
 5 allegations in the original proceeding that
 6 my client filed are false. And I never knew
 7 that to be a malicious prosecution action.

8 But my research yielded what Mr. Link
 9 indicated this morning, which is, the
 10 Debrincat case is the blueprint for this
 11 trial. The Debrincat case actually has the
 12 most guiding principle in it for this Court,
 13 which is going to, I think superimposes the
 14 entire exhibit list of Mr. Scarola's as it
 15 relates to a lot of these exhibits that go
 16 to one of the other lawsuits, whether it's
 17 Mr. Edwards' lawsuits on behalf of the three
 18 women who sued Mr. Epstein and was settled
 19 in 2010 -- that case is over -- or the
 20 exhibits go to one of the other lawsuits.

21 The statement in Debrincat that's so
 22 important is that Your Honor, Mr. Scarola
 23 and I, parties and witnesses, should be
 24 absolutely excepted from liability to an
 25 action for defamatory words published in the

1 He's not relying on those flight logs.
 2 That's a complete red herring for the Court.
 3 I see why it's a focus, though, because
 4 Mr. Scarola wants to try other cases. This
 5 is not a sexual abuse case. It is not a
 6 federal court action, a Crime Victims'
 7 Rights action. It's not even a defamation
 8 case, which Your Honor clearly stated this
 9 morning when denying the affirmative
 10 defenses related to defamation.

11 So to allow flight logs into this
 12 malicious prosecution case is completely
 13 irrelevant to the issue of whether the facts
 14 that my client relied on when he filed the
 15 original proceeding were in existence at the
 16 time that he filed it.

17 The facts are that there was a civil
 18 action for forfeiture proceeding against
 19 Rothstein filed with the U.S. Attorney's
 20 Office; that the Rothstein's firm was
 21 dissolving; that Mr. Edwards held himself
 22 out as a partner in that firm; that
 23 Mr. Edwards had the three lawsuits, which --
 24 he even concedes in his most recent
 25 deposition -- were used by Mr. Rothstein to

1 course of judicial proceedings.

2 So when Mr. Scarola pulls out my
 3 complaint, my client's original proceeding
 4 and wants to parse through independent
 5 allegations or paragraphs and say, I'm going
 6 to prove that that statement is false and
 7 you should never pled it, that's not what
 8 the malicious prosecution law says. That's
 9 not what we are here to do.

10 We here for Your Honor to decide as a
 11 threshold matter, whether the facts that my
 12 client reasonably relied on existed at the
 13 time he commenced the original proceeding.

14 And, in fact, that's the Liabos case
 15 that Your Honor discussed with us back on
 16 November 29th, where there's a mixed
 17 question of fact of law, Your Honor has to
 18 do that threshold determination of if
 19 there's any question or dispute of those
 20 facts that my client relied on were not in
 21 existence. If the facts existed, then you
 22 have to determine, as the Court, whether my
 23 client had sufficient probable cause.

24 So what are the facts that my client
 25 relied on? They are not the flight logs.

1 fabricate -- and that's the word that
 2 Mr. Edwards testified to under oath -- to
 3 fabricate -- and create a fantasy. That was
 4 another word Mr. Edwards used.

5 Those facts, did they exist? It sounds
 6 like we're in agreement. Those facts
 7 existed.

8 The Razorback lawsuit, brought by
 9 Mr. Bill Scherer, down in Fort Lauderdale,
 10 who was quoted in a newspaper article, my
 11 client read and relied on that said
 12 Mr. Rothstein was tricking investors. He
 13 used Epstein's cases as a showpiece and
 14 bait. Which Epstein cases? The one that
 15 Edwards had.

16 So the flight logs are irrelevant.
 17 They are far astray from what we are here to
 18 try. And they are an attempt to open up
 19 some other lawsuit, sexual --

20 By the way, the three clients of
 21 Mr. Edwards, Mr. Edwards concedes, were
 22 not -- you never heard Mr. Scarola deny
 23 that -- because Mr. Edwards conceded, they
 24 are not on my client's planes.

25 So this, like many of the other

1 exhibits, Your Honor, must be precluded,
 2 because they are wholly irrelevant. And if
 3 there was any remote probative value, they
 4 are prejudicial to talk about flight logs
 5 and celebrities who may have been on my
 6 client's planes.

7 THE COURT: I think that the issue
 8 itself -- meaning the tangential allegations
 9 that were made that mentioned flight logs or
 10 mentioned the good faith discovery aspects
 11 of Mr. Edwards' plight relating to his three
 12 clients -- has some relevancy.

13 However, the flight logs themselves
 14 would be subject to -- and the Court is
 15 sustaining at this juncture the relevancy
 16 objection, and also a 403 objection, and
 17 that is, that while mentioning the fact that
 18 Mr. Edwards in good faith -- whatever the
 19 case may have been -- sought these flight
 20 logs as part of his discovery process
 21 representing the three young women, at the
 22 same time the Court has expressly indicated
 23 its significant reservations. And in fact,
 24 it's condemnation of trying either those
 25 cases in this courtroom -- as far as the

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

1 malicious prosecution case is concerned --
 2 or more importantly, that we are going to
 3 potentially constructively try other either
 4 underaged or over the age of consent --
 5 albeit potential sexual assault claims -- in
 6 this forum.

7 So again, while it may become relevant
 8 as to why Mr. Edwards went about his
 9 business in seeking out those flight logs in
 10 a matter of good faith discovery, the flight
 11 logs themselves, in this Court's respectful
 12 view based upon its ruling, are irrelevant.
 13 And if there's any probative value at all,
 14 they would be materially outweighed by the
 15 prejudice of 403.

16 MR. SCAROLA: May I raise a question,
 17 Your Honor?

18 THE COURT: Briefly.

19 MR. SCAROLA: Thank you.

20 Do I understand the Court's ruling to
 21 be that Mr. Edwards is going to be able to
 22 explain why he was seeking the discovery he
 23 was seeking, why he was seeking the flight
 24 logs, the fact that he did obtain flight
 25 logs that confirmed independent information

1 apples and oranges. And that is, I don't
 2 want to place the Court's incriminator 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.

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

1 didn't mean to interrupt.

2 THE COURT: What I'm trying to say is
 3 things like flight logs, the danger of
 4 unfair prejudice. And also, in -- to answer
 5 your question regarding the cases that talk
 6 about the prior similar acts or perhaps even
 7 subsequent similar acts, those cases are
 8 from the forum of which the actual criminal
 9 claim, or perhaps even a civil claim that
 10 stems from the alleged assault, is being
 11 heard.

12 Again, what I'm trying to emphasize is
 13 that I do not want to introduce tangential
 14 matters into this case which would either
 15 directly or indirectly, whether purposefully
 16 or not, inflame this jury.

17 So that is the ruling of the Court.

18 I want to move forward now on to the
 19 next issue that's being objected to, that is
 20 what is generically listed as Jeffrey
 21 Epstein's phone records.

22 MS. ROCKENBACH: May I approach, Your
 23 Honor? And I can swap with the court
 24 Exhibits 10 and 9, the phone records that
 25 were produced to my office by Mr. Scarola.

1 clear, and that is, that the relationship
 2 between the legitimacy of the three
 3 claims -- L.M., E.W. and Jane Doe -- are
 4 going to be permitted in a manner that
 5 befits the dignity of the courtroom, without
 6 pejorative commentary as to Mr. Epstein,
 7 nor, obviously, as to the three plaintiffs
 8 at issue.

9 And as conceded by Epstein in his
 10 papers, once Mr. Mr. Link and Ms. Rockenbach
 11 became involved to the matter, and that is,
 12 there's no conceivable way that those issues
 13 can be ignored, because of the nature of
 14 Mr. Epstein's announced defense as well as
 15 his deposition testimony to the extent that
 16 he testified. And that is, that these three
 17 cases were a part of some type of an
 18 elaborate scheme by Rothstein and others,
 19 including the litigation team -- which is
 20 defined as including Edwards -- to somehow
 21 inflate, gin up, overexaggerate, whatever
 22 the case may be, the value of those cases to
 23 these investors, whatever damage was caused
 24 to Epstein as a result thereof.

25 So that's the clear unadulterated

1 Your Honor, the objection is identical
 2 to the last in that they are not relevant.
 3 My client's phone records, if there was any
 4 remote relevance as to who my client may
 5 have called on any given day, I don't think
 6 that's going to be -- I think it's
 7 prejudicial. I think there's a danger of
 8 prejudicing this jury.

9 I am not quite sure what relevance
 10 Mr. Scarola thinks that phone records have
 11 to the malicious prosecution action, unless
 12 they think we may hear that there is going
 13 to be some attempt to prove the falsity of
 14 some individual allegation in the original
 15 proceeding, which is not what we should be
 16 doing here in this action.

17 THE COURT: Thank you.

18 MR. SCAROLA: I am -- I continue to be
 19 extremely puzzled by that statement, that we
 20 are not here to prove the falsity of claims
 21 in the original complaint.

22 I would like some guidance from the
 23 Court.

24 THE COURT: No need to be puzzled. I
 25 think I've already made myself abundantly

1 ruling of the Court as to that issue.

2 MR. SCAROLA: And I understand that,
 3 sir. My question to you is, if there is a
 4 specific allegation in the complaint --

5 THE COURT: That was brought by
 6 Mr. Epstein.

7 MR. SCAROLA: -- that was brought by
 8 Mr. Epstein against Mr. Edwards, does Your
 9 Honor's ruling contemplate that we get to
 10 prove that allegation is false? Without
 11 getting into what exhibit we are going to
 12 use to prove it's false, is there any issue
 13 about the fact that if he alleged it in the
 14 complaint and it's false, we get to prove
 15 it's false?

16 THE COURT: There's no issue as far as
 17 I am concerned.

18 MR. SCAROLA: Thank you, sir. I think
 19 that helps a great deal, because I have been
 20 hearing something entirely different
 21 repeatedly from the other side. I didn't
 22 understand how they can possibly be making
 23 that argument that we weren't permitted to
 24 prove the falsity of every false allegation
 25 in the complaint.

1 THE COURT: My intent is to hold
 2 Mr. Epstein accountable -- as I try to do
 3 each and every day, no matter whether it
 4 litigant or attorney -- and that is, what
 5 they write, they are going to have to stand
 6 behind. And I have got no issues in that
 7 respect at all.

8 MR. SCAROLA: Thank you, sir. That's
 9 very helpful. I appreciate that
 10 clarification.

11 THE COURT: Now, again, the mere fact
 12 that Mr. Epstein mentions flight logs in his
 13 complaint does not ipso facto make the
 14 entire flight log disclosure relevant to the
 15 jury's consideration of the claims.

16 So I want to temper my broad statement
 17 by that example as it may constitute
 18 examples in other matters that he's claimed.

19 But generally, globally, yes. The
 20 accountability issue is still resonating
 21 with the Court, and will always resonate for
 22 as long as I am doing this.

23 MR. SCAROLA: Thank you, sir. I do
 24 appreciate that clarification. I'm sorry to
 25 the extent that any of that may seem to be

1 reasonable person would bring this civil
 2 proceedings? That's what the case law says.

3 THE COURT: How else is that testing,
 4 Mr. Link, but for the actual allegations
 5 that were brought?

6 Someone could be conjuring up any
 7 thought process that they may have to
 8 possibly bring a claim. But it's not until
 9 that black and white document is served on
 10 someone and a filing fee is paid, and the
 11 litigation commences -- and as contemplated
 12 by the jury instructions and by the law --
 13 continued by the defendant in a malicious
 14 prosecution claim, the original plaintiff,
 15 to make this at all real.

16 MR. LINK: I think I can answer that
 17 question very easily, and here is why -- and
 18 you raise a really good point.

19 You, Mr. Scarola absolutely gets to
 20 test this. So here is when Epstein's
 21 complaint is filed, December 7th, 2009. I
 22 am suggesting to you that if you read the
 23 Supreme Court case that just came out, it
 24 will tell you what happens afterwards is all
 25 subject to the litigation privilege.

1 argument after Your Honor has ruled. That
 2 helps me a great deal.

3 THE COURT: Let's move on.

4 MR. LINK: Your Honor, may I comment on
 5 that very, very briefly.

6 THE COURT: Sure. Yes, sir.

7 MR. LINK: We have heard the Court rule
 8 that way and we've accepted that ruling. We
 9 don't agree that that's what the law
 10 suggests, but that's the playing field that
 11 you have set for us.

12 THE COURT: The playing field being --
 13 and then you don't agree is exactly what, so
 14 that we can maybe clarify whatever your
 15 disagreement is so that neither of us or any
 16 of us are working under any false pretenses.

17 MR. LINK: Your Honor, we don't believe
 18 that truth or falsity of any specific
 19 allegation has anything to do with malicious
 20 prosecution. It has everything to do with
 21 defamation. Here is why.

22 We believe that malicious prosecution
 23 focuses on the information that you make the
 24 decision to go forward with the lawsuit.
 25 Did you have enough information that a

1 THE COURT: Which Supreme Court case
 2 you are talking about?

3 MS. ROCKENBACH: Debrincat.

4 MR. LINK: It's the first thing it
 5 says --

6 MS. ROCKENBACH: Under headnote one.

7 MR. LINK: -- that everything that
 8 happens after 12/7/09 is protected, it's
 9 subject to privilege. What the allegations
 10 are, the truth or falsity, any statements
 11 made by the lawyers, any statements made by
 12 the parties or witnesses.

13 THE COURT: Hold on just a moment.
 14 What about, though, extra judicial
 15 statements? The Debrincat case, the Wolfe
 16 case, for case that we had, was confined to
 17 issues dealing with the litigation itself.

18 The concern that Wolfe had was
 19 primarily one of chilling effect on the
 20 ability of, in that case, a rather
 21 well-known law firm in Miami and their
 22 ability to properly litigate their case
 23 without feeling -- feeling tethered by that.

24 What transpires outside of the
 25 litigation, are you suggesting to me, would

1 not be relevant, meaning publication, things
 2 of that nature, things that this expert is
 3 going to say in terms of damages caused to
 4 Edwards as a result of this filing and its
 5 continuation.

6 MR. LINK: We are on two different
 7 points then.

8 THE COURT: Sorry. I may have
 9 misunderstood.

10 MR. LINK: You got it, but you are on
 11 two different points, so let me tell you
 12 this.

13 The extra judicial statements -- and
 14 it's a great example. Epstein sues for
 15 abuse of process, RICO, whatever he sues
 16 for. Outside of the courtroom Mr. Epstein
 17 stands up and says to a reporter,
 18 Mr. Edwards is a thief. There's no part of
 19 that statement that's connected to the
 20 litigation. He doesn't have immunity.

21 He makes a statement about the
 22 litigation, and he says, I have alleged
 23 Edwards was connected to Rothstein's Ponzi
 24 scheme. He says it outside of the
 25 courtroom. Is that connected to the

1 absence of probable cause.

2 THE COURT: You're bringing back bad
 3 memories. If I heard that once, I heard it
 4 a thousand times. I think that's why Judge
 5 Warner went out of our -- very kind way -- I
 6 am saying that with an abundant amount of
 7 respect. I think she's an exceptional
 8 appellate judge -- she stated that the trial
 9 court correctly followed the Wolfe decision.

10 Off the record.

11 (A discussion was held off the record.)

12 THE COURT: I do need a break. I hate
 13 to break you in the middle of a thought, but
 14 I do have some lunch plans. I want to make
 15 sure that I respect those. It's about five
 16 or so after noon. Let's get back, please,
 17 assembled at 1:20.

18 What my plan is, I'm going to give you
 19 another two hours this afternoon. So we
 20 will go whenever we start and two hours
 21 thereafter.

22 What I would like to do is try to get
 23 through as much of this as we can.

24 My continued suggestion is to work with
 25 each other, if you can, as far as any of

1 litigation? Yes, it is.

2 So I don't think the law is unclear at
 3 all. And I don't think Mr. Scarola would
 4 dispute it if you asked him does the
 5 litigation privilege protect everything that
 6 happens in a lawsuit through parties,
 7 witnesses, lawyers and judges that are
 8 connected to the litigation. He would say,
 9 in any other circumstance -- he said it in
 10 this room -- he said it in this courtroom
 11 two or three times -- all of that is
 12 protected by the litigation privilege.

13 MR. SCAROLA: No. There is one
 14 exception. And the one exception is
 15 continuing to maintain the lawsuit in the
 16 absence of probable cause. That's one
 17 exemption. Everything else is protected by
 18 the litigation privilege. The one thing
 19 that is not, the one exemption carved out of
 20 the litigation privilege by every court, up
 21 until the Third DCA decided otherwise, and
 22 the Fourth DCA issued its opinion, every
 23 other court in the nation has said you
 24 cannot maintain a lawsuit in the absence of
 25 probable cause. You can't file it in the

1 these exhibits may be concerned. And then
 2 what I will do is -- if you are prepared to
 3 do it -- is get into the motion to stay if
 4 we have time to do that today, okay?

5 MR. GOLDBERGER: Judge, I apologize.
 6 So I'm kind of responsible for the stay
 7 motion, and I'm juggling a couple of balls
 8 right now. I'm not going to be here this
 9 afternoon. I got called up for trial. I
 10 have to go prepare for that.

11 On a personal level, my son and
 12 daughter-in-law, their due date is today. I
 13 think it's happening so --

14 THE COURT: If you would have told me
 15 that, I would have been able to hear it
 16 before we did this evidence issue, because I
 17 think I mentioned earlier that I was
 18 prepared to do this today.

19 You know, my suggestion is probably
 20 that either Mr. Link or Ms. Rockenbach could
 21 argue it in your absence.

22 I will be glad to take it up the first
 23 thing this afternoon, Jack, if it will help
 24 you. But, you know --

25 MR. GOLDBERGER: I apologize for not

1 telling you ahead of time.

2 THE COURT: I understand. You have a
 3 lot on your mind and I respect that. But at
 4 the same time, I told the parties before,
 5 you know, I am slammed, and I have to get
 6 this stuff pushed through in the best way I
 7 can describe it. So I'm going to have to
 8 insist that you make yourself available.

9 I will be willing to do it, as I said,
 10 first thing out of the gate. I don't expect
 11 it to take very long. I'm expecting it to
 12 be about a 15-minute argument per side. And
 13 I will get you out of here, to the best of
 14 my ability, by 2:00 in the afternoon, as
 15 long as there's no unforeseen circumstance.

16 MR. GOLDBERGER: Let me talk to
 17 co-counsel.

18 MR. SCAROLA: I can do my argument in
 19 five minutes on that issue.

20 THE COURT: I don't think it's going to
 21 take more than 15 minutes to present, then
 22 five on the rebuttal. So I'm telling you
 23 right now, we can get it done in less than
 24 half an hour. I will be glad to do that. I
 25 will give you every accommodation, as I

1 IN THE CIRCUIT COURT OF THE
 2 FIFTEENTH JUDICIAL CIRCUIT, IN
 3 AND FOR PALM BEACH COUNTY, FLORIDA
 4 Case No. 502009CA040800XXXXMB

5 JEFFREY EPSTEIN,
 6 Plaintiff/Counter-Defendant,
 7 vs.
 8 SCOTT ROTHSTEIN, individually,
 9 BRADLEY EDWARDS, individually,
 10 Defendants/Counter-Plaintiff.

11 _____/ VOLUME II

12 TRANSCRIPT OF PROCEEDINGS

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

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

21 Sonja D. Hall
 22 Palm Beach Reporting Service, Inc.
 23 1665 Palm Beach Lakes Boulevard, Suite 1001
 24 West Palm Beach, FL 33401
 25 (561) 471-2995

1 would with any of you here. I would do the
 2 same thing.

3 But I need to respect the fact that
 4 I've put aside this time, and that I've
 5 prepared in accordance with the information
 6 that I received from Counsel yesterday in
 7 the manner which puts that as the next -- as
 8 the next viable thing to review and -- I
 9 haven't gone through the supplement motions
 10 to compel yet. That is what I was planning
 11 to do on Thursday.

12 I'm sorry about that. Again, it is
 13 with all due respect to your long experience
 14 and the fact I think you're an excellent
 15 lawyer and a great person, so it's not
 16 personal at all, it's just needing to get
 17 this done.

18 Thank you. And thank you all for
 19 understanding. I appreciate that. See you
 20 back assembled at 1:20.

21 (A recess was had 12:09 p.m. - 1:25 p.m.)

1 THE COURT: Continue on with the
 2 discussion. Mr. Link, you were in
 3 mid-thought.

4 MR. SCAROLA: I think Mr. Goldberger is
 5 here to do the stay.

6 THE COURT: Let's go ahead and take
 7 care of that.

8 Mr. Goldberger.

9 MR. GOLDBERGER: Thank you for taking
 10 me out of order. One of those days I have
 11 so much going on.

12 THE COURT: I completely understand. I
 13 thank you also for adjusting your schedule
 14 as well.

15 All right, let me get my materials
 16 ready for that aspect of the case. I think
 17 I am ready to go. Please proceed.

18 MR. GOLDBERGER: Thank you, Honor. So
 19 we have a motion to stay your proceedings
 20 pending at this time. I think it's
 21 important for us to kind of discuss first
 22 with the Court what it is that we are
 23 seeking to have resolved before this case --
 24 we would like to see it proceed.

25 And I bring that up because

1 Mr. Scarola, in a prior hearing, had
 2 mentioned that this is not just about the
 3 resolution of the CVRA. Mr. Epstein perhaps
 4 has other matters that he could potentially
 5 have criminal liability concerning in other
 6 jurisdictions that would not be covered by
 7 the NPA, which is part of the CVRA.

8 THE COURT: Let's put on the record
 9 exactly what you're speaking about so that
 10 if anyone needs to review this they
 11 understand these acronyms completely.

12 MR. GOLDBERGER: So the first matter we
 13 have, Your Honor, is what has been referred
 14 to as the CVRA case. That is the Crime
 15 Victims' Reporting (sic) Act. And that
 16 matter is being litigated in federal court
 17 in the Southern District of Florida court
 18 before Judge Marra.

19 MR. SCAROLA: Excuse me. Since we are
 20 doing this for purposes of the record, I
 21 think that you may have mistaken. CVRA is
 22 not crime victims' reporting act. It is the
 23 Crime Victims' Rights.

24 MR. GOLDBERGER: Thank you very much.
 25 I appreciate that, Mr. Scarola.

1 agreement and subject Mr. Epstein to
 2 criminal prosecution for a matter that he
 3 has already pled guilty to.

4 It tugs at the very, very cornerstones
 5 of due process, Your Honor. But as a
 6 criminal defense attorney with a lot of
 7 years doing this, I have to act cautiously
 8 because of one thing that Judge Marra said.

9 Judge Marra, in one of the orders in
 10 this case, indicated that setting aside of
 11 the non-prosecution agreement is something
 12 that he would consider.

13 So I would be remiss, I would
 14 be committing malpractice if I allowed my
 15 client to testify in matters in your lawsuit
 16 before Your Honor in matters that would be
 17 part of the non-prosecution agreement. So
 18 that's kind of procedurally where we are
 19 right now.

20 What I wanted to clarify for the Court,
 21 is that we are not seeking to stay this case
 22 for any reason other than matters that are
 23 contained within the non-prosecution
 24 agreement.

25 Now, Mr. Scarola has made reference to

1 So that matter concerning the CVRA case
 2 is pending before Judge Marra in the
 3 Southern District of Florida. In that
 4 matter, Mr. Edwards, as the attorney for
 5 three individuals -- C.W., T.M. and Jane Doe
 6 Number 1, who happen to be involved in this
 7 case -- are seeking the unprecedented remedy
 8 of setting aside Mr. Epstein's
 9 non-prosecution agreement.

10 For the record, we need to establish
 11 that there's a non-prosecution agreement in
 12 place that prevents the US Attorney's Office
 13 for the Southern District of Florida in
 14 going forward on any criminal prosecution of
 15 Mr. Epstein related to certain enumerated
 16 offenses if Mr. Epstein complies with his
 17 non-prosecution agreement.

18 Mr. Epstein has complied with all parts
 19 of that non-prosecution agreement. He has
 20 served a sentence that was part of that
 21 non-prosecution agreement, and he's going
 22 about his life.

23 In an unprecedented action,
 24 Mr. Edwards, on behalf of these individuals,
 25 is seeking to set aside that non-prosecution

1 potential prosecutions in other
 2 jurisdictions: New York, US Virgin Islands,
 3 many other places. That is not what this
 4 stay motion is about.

5 THE COURT: But isn't that critical to
 6 the analysis as to at least one prong of the
 7 required elements that the Court is expected
 8 to look into, and that is, the length of
 9 time that the delay is being sought?

10 Because even though the argument that
 11 you're making fits within a certain
 12 parameter, and somewhat similar to the
 13 discussions we had last week about each side
 14 wanting to frame their respective cases in
 15 the manner that they see fit -- and I
 16 respect that because they are advocates --
 17 but from the Court's perspective, from the
 18 general public's perspective, from the
 19 perspective of Mr. Edwards, when it comes to
 20 Mr. Epstein's invocation of the Fifth
 21 Amendment, whether or not the parameters
 22 that you're seeking in your motion only
 23 applies in the NPA at issue here, that same
 24 potentiality of criminal prosecution in any
 25 of these jurisdictions where -- not being a

1 criminal defense lawyer, I am not going to
 2 sit here and try to estimate what the
 3 statute of limitations are for these types
 4 of alleged criminal activity --

5 And again, I am not accusing anybody of
 6 anything. I want that to be clear. You
 7 brought up these other jurisdictions and the
 8 potentialities. I don't know what those
 9 statute of limitations are. I only know
 10 that in my limited experience when it comes
 11 to these types of potential claims or
 12 potential charges, that the statutes are
 13 typically extraordinarily longer,
 14 particularly when minors are involved for
 15 very obvious reasons.

16 So while the parameters that you are
 17 suggesting may be your intent, that when a
 18 broader perspective is looked upon, it's
 19 very possible that the same outcome that,
 20 i.e., the invocation of the Fifth
 21 Amendment -- which I respect, I understand,
 22 and fully intend to comply with his ability
 23 to invoke the Fifth when appropriate -- we
 24 don't know when that ends.

25 MR. GOLDBERGER: I have a simple answer

1 brought, as you have recited them -- again,
 2 I appreciate the fact that you were here
 3 last week to help with those aspects --
 4 those criminal charges pertain to them when
 5 they were minors. So I don't want to, by
 6 way of convenience or otherwise, suggest
 7 without a full agreement or something that's
 8 going to satisfy the Court, that they are
 9 willing to have their names utilized, even
 10 at this juncture, because my comfort level
 11 at this point is not high.

12 MR. GOLDBERGER: I 100 percent
 13 understand. I have lived this case for 10
 14 years. These names have been used
 15 throughout both the criminal litigation and
 16 the litigation of these cases.

17 THE COURT: So in the case before Judge
 18 Marra, their names have been used?

19 MR. GOLDBERGER: They have not been.

20 MR. SCAROLA: Your Honor, if I may, as
 21 I've thought about it. It is my belief that
 22 there's only one Epstein victim who has
 23 voluntarily agreed that her name may be
 24 used, and that is Virginia Giuffre.

25 The others, I'm almost certain, have

1 for that, Your Honor. And I have sat here
 2 and very carefully listened to Your Honor's
 3 pronouncements and the way you've the
 4 handled this hearing and the hearing that we
 5 have had. And you have indicated that
 6 what's in play in this case are C.W., T.M.,
 7 and Jane Doe Number 1. Those are the
 8 individuals that you have indicated you are
 9 going to allow testimony concerning. Those
 10 are the very same individuals that are in
 11 the NPA. That's all we care about.

12 THE COURT: Excuse me for interrupting,
 13 but I do want to make sure that this is
 14 E.W., L.M. and Jane Doe -- these three
 15 individuals are now over the age of 18.

16 Have they agreed to have their names
 17 utilized at this point?

18 Mr. Scarola, do you wish to comment on
 19 that? Do you know?

20 MR. SCAROLA: I cannot speak
 21 authoritatively about that, Your Honor.

22 THE COURT: My preference,
 23 Mr. Goldberger, is to continue to go ahead
 24 and use the initials until I'm comfortable,
 25 because the criminal charges that were

1 not -- and in fact, when the deposition was
 2 recently taken of E.W., it was with the
 3 expressed stipulation that she would be
 4 referred to in the record by those initials.

5 THE COURT: The only positive that's
 6 come out of this is getting those names and
 7 listening to those names, I don't know any
 8 of these young ladies. I don't know any of
 9 their families. The names don't sound a bit
 10 familiar to me. So at least I don't have to
 11 worry about that.

12 Mr. Link, did you want to add anything?

13 MR. LINK: If I might.

14 The witness list of Mr. Edwards
 15 actually names these folks by name.

16 MR. SCAROLA: That was inadvertent,
 17 Your Honor, and we plan to address it.

18 THE COURT: Okay. Thank you.

19 MR. LINK: The second thing, with Your
 20 Honor's permission, we brought the plea.
 21 You were asking about it last time what the
 22 actual counts were, and I have a copy of the
 23 non-prosecution agreement, which I can
 24 provide to the Court. We have the actual
 25 documents.

1 THE COURT: Thank you. I appreciate
2 that.
3 MR. LINK: We will file them so they're
4 part of the court record.

5 THE COURT: For the today, I'm going to
6 ask our court reporter -- absent any
7 objection from respective counsel -- to
8 simply amend the record so that only the
9 initials are used, please, so that we don't
10 have the names specifically stated. And
11 hearing no objection.

12 We may need to address this later on
13 down the line. But again, until my comfort
14 level is satisfied, I want to do everything
15 we can to continue to use their initials or
16 the Jane Doe as the third individual.

17 Again, Mr. Goldberger, I apologize for
18 interrupting you.

19 MR. GOLDBERGER: And I apologize if the
20 names were mentioned.

21 THE COURT: That's okay.

22 MR. GOLDBERGER: Anyhow, Judge -- but
23 to answer the Court's well-founded question,
24 is there any finality to the request for a
25 stay, and the answer is that Your Honor has

1 who is the counter-plaintiff in this case.
2 So Mr. Epstein is put between the proverbial
3 rock and a hard place in this situation,
4 Your Honor.

5 THE COURT: You know the thrust of
6 Mr. Scarola's argument.

7 MR. GOLDBERGER: I know what's coming.
8 I know what's coming. That we started this.

9 THE COURT: And that's critical,
10 because but for Mr. Epstein's action in
11 bringing this lawsuit in 2009 and amending
12 his complaint in 2011, and then failing to
13 address in any fashion the motion for
14 summary judgment that was ultimately brought
15 by Mr. Edwards against Mr. Epstein and a
16 judgment resulting therefrom -- that is,
17 judgment of dismissal of the claim by
18 Mr. Epstein -- this never would have been an
19 issue. What we are dealing with now would
20 never have been an issue.

21 I can certainly understand, and I
22 believe there would be firmer footing to
23 rely on if Mr. Edwards had brought some type
24 of claim against Mr. Epstein, let's say,
25 some type of defamation claim -- I am not

1 ruled already that the testimony that will
2 be allowed in this trial is the testimony of
3 these three individuals; the very, very same
4 three individuals who are part of the
5 attempt to set aside the non-prosecution
6 agreement.

7 So I want to make it clear to the court
8 our request for a stay is a limited request
9 for a stay, until such time as the CVRA case
10 is resolved. And it has nothing to do with
11 other alleged women who may be making claims
12 against Mr. Epstein. And that becomes even
13 more important, based on Your Honor's ruling
14 that you've made, that those are the facts
15 that you are going to allow the parties to
16 go into this case and not tangential issues
17 involving other individuals.

18 So that is our -- that is the area --
19 and that is the case that we are seeking the
20 stay concerning.

21 So where are we procedurally? Well,
22 this attempt to set aside the
23 non-prosecution agreement was brought by
24 Bradley Edwards. We can't lose sight of
25 that. It was brought by Bradley Edwards,

1 suggesting there are any grounds for that.
2 I am just giving an example -- if he had
3 brought a defamation claim against
4 Mr. Epstein for things that may have
5 resulted from extra judicial statements that
6 may have been made by Mr. Epstein to the
7 press, to whomever, to third parties,
8 published, and had some damage to
9 Mr. Edwards, I could understand the
10 interplay and the potential strategic
11 decisions that would have been made by
12 Mr. Edwards in, on the one hand, having the
13 Crime Victims' Rights Act claim being
14 brought -- which, arguably, out of necessity
15 Mr. Epstein has to preserve his Fifth
16 Amendment right to self-incrimination, and
17 the fact that Mr. Edwards acted in taking
18 the offensive in bringing the tort claim of
19 some nature, generically -- again, just as
20 an exemplar -- against Mr. Epstein, the
21 strategies would then coalesce, co-exist and
22 would create concern of a significant nature
23 for the Court.

24 But this is quite different. How do we
25 address that?

1 MR. GOLDBERGER: Okay. Respectfully,
 2 Judge, strategy has nothing to do with this.
 3 It's the playing field that we are on right
 4 now.

5 Now, Mr. Epstein filed his lawsuit
 6 against Mr. Edwards, and he very well could
 7 have gone forward in that lawsuit without
 8 having to testify, without having to worry
 9 about Fifth Amendment privileges, whether
 10 he's implicating himself in any kind of
 11 criminal liability. He could have gone
 12 forward on that case against Mr. Edwards
 13 without having to get on the stand and
 14 testify.

15 Now, in defense of that case, if that
 16 case had gone forward and the defense had
 17 called Mr. Epstein, then he would have had a
 18 decision to make as to whether he was going
 19 to answer the question.

20 THE COURT: Well, I couldn't imagine,
 21 in reviewing Mr. Epstein's complaint now for
 22 the -- beyond 10 times -- that he could have
 23 avoided taking the witness stand to justify
 24 most, if not all of his claims, in that
 25 initial suit. But go ahead.

1 NPA.
 2 I am not asking this Court to stay this
 3 case for an indeterminate period of time.
 4 There's three things that can happen, Your
 5 Honor. Mr. Edwards can volunteer to not
 6 seek the remedy of setting aside the
 7 non-prosecution agreement. He's seeking
 8 other remedies in his CVRA case. He could
 9 do that. Judge Marra could enter his order
 10 on the account to set aside the NPA, or this
 11 Court can temporarily stay the matter until
 12 such time one of those things happen.

13 There's been no testimony on the record
 14 from anybody as to how long that stay is
 15 going to require.

16 I think at one hearing you asked
 17 Mr. Edwards -- not on the stand or anything
 18 like that -- how long is that CVRA case
 19 going to go on for. Mr. Edwards said, Well,
 20 it could go on for a long time. Well,
 21 that's the only record you have right now
 22 that this thing is not coming to fruition.

23 THE COURT: Well, that, and
 24 anecdotally. In seeing the newspaper
 25 account, I believe it was suggested that the

1 MR. GOLDBERGER: If we put that aside,
 2 and we turn to the playing field that we are
 3 on right now, we have one lawsuit that's
 4 pending right now. You can call it anything
 5 you want. You can call it counter-
 6 plaintiff, counter-defendant -- I practice
 7 on the other side of the elevator -- but we
 8 are defending a lawsuit right now. We are
 9 the defendants in this case.

10 We cannot defend that case. It is not
 11 a fair playing field. We can't defend this
 12 case because of what the plaintiff has done.
 13 He has brought an action to set aside
 14 Mr. Epstein's non-prosecution agreement.
 15 And Mr. Epstein has no choice, if I'm his
 16 lawyer, but to invoke his Fifth Amendment
 17 privileges.

18 What does that do? It's going to allow
 19 Mr. Scarola to ask for all of these adverse
 20 inferences and try to truck roll those
 21 adverse inferences to this jury. And that's
 22 the playing field we have right now.

23 And we didn't bring this upon
 24 ourselves. They are doing it because they
 25 have brought this action to set aside the

1 federal court is not looking to try the
 2 case -- or there's going to be a significant
 3 hiatus in terms of Judge Marra getting out
 4 an order until the spring or summer of 2018.

5 MR. GOLDBERGER: I don't have a
 6 recollection of that, Your Honor. But if
 7 that's been out there, I accept that --

8 THE COURT: It didn't give me much
 9 confidence that it was going to be
 10 accomplished in a relatively brief period of
 11 time. And certainly -- at least, again
 12 anecdotally, without having it here in front
 13 me -- not going to be accomplished before
 14 March 13 of 2018, which is the trial day
 15 here.

16 MR. GOLDBERGER: My review of PACER, I
 17 think, is they are at the point where
 18 there's a motion for partial summary
 19 judgment that's outstanding. So that to
 20 me -- again, not being necessarily a civil
 21 practitioner -- when I hear the word summary
 22 judgment, means to me someone is asking to
 23 end this thing. I think that's the juncture
 24 that it's at right now.

25 So my point is, Your Honor, that we are

1 not seeking an indeterminate stay. And the
 2 Court has read the papers and you are aware
 3 of the various factors that the Court is
 4 considering in determining whether to grant
 5 the stay. You have discussed one. I ask,
 6 rhetorically, what is the prejudice at this
 7 point for a limited stay so that matter
 8 resolves?

9 Mr. Edwards, if he has been damaged,
 10 has been damaged already. They want to try
 11 this case in March. Everything that has
 12 happened, has happened. Nothing is going to
 13 change.

14 THE COURT: What they will argue,
 15 though, is that there is financial
 16 recompense that Mr. Edwards is claiming that
 17 has built up over the years -- and
 18 Mr. Scarola was alluding to -- there's a
 19 substantial amount of loss that he has
 20 encountered as a result of the ongoing
 21 litigation over the last seven, going on
 22 eight years.

23 MR. GOLDBERGER: Your Honor, when you
 24 weigh that -- Mr. Edwards, admittedly has
 25 testified in deposition that he's

1 is waiting for everything to flow from that.

2 THE COURT: All right. Mr. Goldberger,
 3 thank you. I will give you a couple minutes
 4 to rebut if you choose to.

5 Mr. Scarola.

6 MR. SCAROLA: The complaint out of
 7 which this malicious prosecution claim
 8 arises was filed on December 9 of 2009. So
 9 we are about to observe the ninth
 10 anniversary of the pendency of this
 11 litigation.

12 THE COURT: Excuse me for my
 13 mathematical --

14 MR. SCAROLA: No, no. That's quite all
 15 right, sir. I didn't make that comment as
 16 any criticism of Court's math, but just to
 17 observe that there have been nine years
 18 during which a motion to stay could have
 19 been brought to the attention of the Court.

20 And we know that the same basis upon
 21 which the argument rests today existed on
 22 December 9, 2009, because the complaint
 23 itself refers in paragraph 42(1) to the
 24 pendency of the non-prosecution agreement.
 25 So it was there. And Mr. Epstein knew it

1 successful. He's doing very well for
 2 himself, and I congratulate him for that.
 3 But when you weigh that to the prejudice to
 4 Mr. Epstein that he has these handcuffs --
 5 he's got them back on -- he can't defend
 6 this case at this point.

7 I think -- Your Honor, we talked about
 8 the 403 analysis on other matters, prejudice
 9 versus probative value. I think we can kind
 10 of do a balancing analysis in this
 11 situation.

12 Maybe Mr. Edwards wants to have his day
 13 in court sooner than later. And there may
 14 be some prejudice there. But when you look
 15 at the extreme prejudice that Mr. Epstein is
 16 suffering, well, he just can't defend this
 17 case.

18 Courts are designed to be level playing
 19 fields, and that's got nothing to do with
 20 what the Court's doing. But just by virtue
 21 of the way the facts have come out in this
 22 case and procedurally what has happened, it
 23 is not a level playing field for Mr. Epstein
 24 because he has no choice but to invoke his
 25 Fifth Amendment privileges, and Mr. Scarola

1 was there when he filed this case.

2 And as Your Honor observed, he filed
 3 this case within days of the implosion of
 4 Rothstein, Rosenfeldt & Adler when
 5 presumably Mr. Edwards would have been most
 6 susceptible to a malicious prosecution
 7 assault. He didn't need to file it then.
 8 He had at least four years in which to file
 9 it.

10 If he's claiming he's a victim of a
 11 RICO action, he would have had at least five
 12 years in which to file it. If he claims
 13 that somehow he was unaware of the
 14 reasonable basis for the filing of a claim
 15 against Mr. Edwards because relevant facts
 16 were concealed from him, then the statutes
 17 of limitation wouldn't have even begun to
 18 run.

19 So there's no question about the fact
 20 that Mr. Epstein brought this upon himself.
 21 He initiated these proceedings nine years
 22 ago knowing, as Mr. Goldberger says, he
 23 could not defend them.

24 And indeed he couldn't defend them,
 25 because in the face of a motion for summary

1 judgment, which called upon him to disclose
 2 the basis for his claims against
 3 Mr. Edwards, he filed nothing.

4 And on the eve of the motion for
 5 summary judgment, he voluntarily dismissed
 6 his case. He didn't say, I need a stay in
 7 order to be able to produce evidence to
 8 support my claims. He allowed the claims to
 9 be resolved against him now conclusively.

10 So those arguments, quite frankly,
 11 don't make sense. And I have gone through
 12 in the written response that we filed and
 13 pointed out all of the stages in the
 14 litigation where Mr. Epstein reasonably
 15 could have come before the Court and said, I
 16 need a stay.

17 What the defense acknowledges in their
 18 motion to stay is -- and this is a quote.
 19 "Florida courts have long recognized that
 20 although under certain circumstances a trial
 21 court may grant a stay in a civil proceeding
 22 for a limited time during the pendency of a
 23 concurrent criminal proceeding, such a stay
 24 is not constitutionally required.

25 "The earlier the motion is made, the

1 more favorably it's looked upon. The
 2 shorter the stay can reasonably be
 3 anticipated to last, the more favorably it's
 4 looked upon."

5 The burden of proving how long this
 6 stay reasonably can be anticipated to last
 7 is not on us. It's on the party making the
 8 motion.

9 THE COURT: This is not a typical
 10 concurrent legal -- strike that --
 11 concurrent criminal prosecution that we see
 12 in automobile accident cases, for example,
 13 where there may be corresponding vehicular
 14 manslaughter case --

15 MR. SCAROLA: Or a drunk driving
 16 charge --

17 THE COURT: Or DUI-type issue.

18 MR. SCAROLA: Clearly. Clearly that's
 19 the circumstance, Your Honor.

20 But let me talk about part of what
 21 Mr. Goldberger has said with regard to what
 22 we can reasonably anticipate with regard to
 23 length of this stay.

24 There are two possibilities with regard
 25 to the non-prosecution agreement. It can be

1 set aside or it cannot be set aside.

2 If it is not set aside, then
 3 Mr. Goldberger tells us that there would be
 4 no longer any basis for the assertion of the
 5 Fifth Amendment privilege.

6 Well, respectfully, I suggest that
 7 there is nothing in the record that supports
 8 the assertion that Mr. Epstein will waive
 9 his Fifth Amendment privilege upon the
 10 favorable conclusion of the Crime Victims'
 11 Rights Act case.

12 THE COURT: As a second point, I
 13 presume that, like any other civil case --
 14 this isn't construed as a civil case,
 15 correct, this Crime Victims' Rights Act
 16 matter?

17 MR. SCAROLA: Yes, sir, it is. Subject
 18 to appeal.

19 THE COURT: That's exactly what I was
 20 going to say. Either side can appeal. So
 21 in other words, the state could appeal -- or
 22 whomever -- the actual federal government
 23 could appeal or Mr. Edward's client could
 24 appeal.

25 MR. SCAROLA: Yes, sir. True.

1 In addition to that, even assuming a
 2 final and conclusive resolution of the Crime
 3 Victims' Rights Act case, which upholds the
 4 validity of the non-prosecution agreement,
 5 there is a federal statute which makes
 6 admissible in any other criminal proceeding
 7 evidence of other child victim crimes.

8 So, Mr. Epstein can have the advantage
 9 of a final disposition with regard to crimes
 10 only in the Southern District of Florida --
 11 as has been repeatedly pointed out. That's
 12 all the non-prosecution agreement covers.

13 But he still has a Fifth Amendment
 14 right to refuse to answer any questions
 15 about the crimes that he committed in the
 16 Southern District of Florida, because they
 17 are admissible in every other jurisdiction
 18 where he's been doing exactly the same thing
 19 to children for years. And no one could
 20 reasonably challenge that assertion of the
 21 Fifth Amendment privilege. So that's one
 22 alternative.

23 The other alternative is the Crime
 24 Victims' Rights Act case results in setting
 25 aside the non-prosecution agreement. And no

1 matter what Mr. Goldberger may say about
 2 what he believes the merits of that claim to
 3 be and the likelihood of that outcome to be,
 4 Judge Marra has clearly indicated that
 5 Jeffrey Epstein faces the possibility of
 6 having that non-prosecution agreement set
 7 aside, in which case, he faces criminal
 8 exposure, criminal liability for the 40
 9 cases that we know of, and any other cases
 10 that are developed subsequent to that time.
 11 And those prosecutions can go on for years
 12 and their appeals can go on for years.

13 So there simply is no basis, none, upon
 14 which a prediction can be made as to a
 15 reasonable limitation associated with a stay
 16 in this case. And these are all things that
 17 Mr. Epstein had an opportunity to avoid, or
 18 at least an opportunity to limit, by
 19 delaying the filing of his maliciously filed
 20 claim.

21 He started this battle knowing the
 22 criminal exposure that he faced clearly at
 23 the time -- not only in the Southern
 24 District of Florida -- but knowing the
 25 criminal exposure he faces elsewhere as

1 ramifications of bringing this lawsuit. And
 2 those potential ramifications being that if
 3 he did not have the ability to sustain the
 4 claims that he made -- whether by way of
 5 summary judgment, jury trial, appeal,
 6 whatever the case might have been -- then
 7 that recognition should have carried over to
 8 anticipate the very exposure which he now is
 9 facing, that being the malicious prosecution
 10 claim brought by Mr. Edwards.

11 MR. SCAROLA: Your Honor, I have just
 12 one last matter that I want to address, and
 13 that is the subject of prejudice.

14 As, Your Honor, I know appreciates,
 15 delay is never the friend of the party with
 16 the burden of proof. We have already
 17 experienced a nine-year delay. And that
 18 does have an impact on our ability to
 19 sustain our burden of proof, because
 20 memories fade and it impacts upon us to a
 21 disproportionate degree than it does to the
 22 defense when we carry the burden of proof.

23 But there's something more significant,
 24 and that is, for nine years these
 25 allegations have repeatedly been receiving

1 well.

2 THE COURT: I made a notation in the
 3 binder. And I think this is what you're
 4 suggesting, Mr. Scarola. Correct me if I am
 5 wrong.

6 What I wrote last night when I was
 7 reviewing these materials, was that
 8 Mr. Epstein by and through his attorney
 9 should have recognized the potential
 10 exposure, i.e., to a malicious prosecution,
 11 when he brought suit against Mr. Edwards and
 12 L.M., for that matter as well.

13 I don't want to include Rothstein in
 14 the mix because that's a separate can of
 15 worms, which we don't have to get into
 16 substantively at this point in time.

17 I don't think there's any way to not
 18 consider that. In other words, when the
 19 various claims were brought against
 20 Rothstein, Edwards and L.M., there should
 21 have been -- and the Court would make this
 22 finding in its ruling, subject to
 23 Mr. Goldberger's rebuttal -- that
 24 Mr. Epstein by and through his counsel
 25 should have realized the potential

1 public attention without any final
 2 disposition exonerating Brad Edwards.

3 There is a poison that has been
 4 circulating within the stream of knowledge
 5 that Brad Edwards has a right, an absolute
 6 right to put an end to. And the only way he
 7 conclusively does that is with a judgment in
 8 his favor in this case.

9 So there is a very, very significant
 10 prejudice that has already been suffered by
 11 delay. There are other aspects -- less
 12 significant. But if this case wasn't filed
 13 until four years later, all of those
 14 appellate proceedings that were very costly
 15 to the plaintiff would have been avoided
 16 because the law would have settled by that
 17 time.

18 So there are many reasons to deny this
 19 motion. There are no reasons to grant it.
 20 Thank you, sir.

21 THE COURT: Thank you, Mr. Scarola.
 22 Mr. Goldberger.

23 MR. GOLDBERGER: I don't want to
 24 respond to each of Mr. Scarola's arguments.
 25 I want to just reiterate the playing field

1 that we have here. The way things stand
 2 right now, Your Honor, Mr. Epstein cannot
 3 defend this case.

4 He can attempt to defend the case, but
 5 he's going to have these adverse inferences
 6 that are going to be pointing at him like
 7 arrows. It's not a fair fight. And the
 8 only way to avoid the situation where it's
 9 not a fair fight is for a limited stay.

10 And when Mr. Scarola says we could have
 11 filed our motion for a stay early on, we
 12 specifically did not file our motion for
 13 stay early on because that case -- that
 14 being the CVRA case -- was in it's infancy.

15 As I've explained to the court, we're
 16 at partial summary judgment status now, so
 17 it's reasonable to assume -- despite what
 18 the newspapers say and despite how fast this
 19 case has moved -- we are much farther along
 20 in the case, and a reasonable stay can make
 21 it a fair playing field, is all that
 22 Mr. Epstein is asking.

23 In my enthusiasm, I may have said
 24 Mr. Epstein pled guilty to offenses
 25 involving the three women. If I did say

1 much by personal perceptions of the
 2 peculiarities of the case as by the facts
 3 actually in evidence, end quote. And that's
 4 a quote from the case called SEC versus
 5 Militano, M-I-L-I-T-A-N-O, which was an
 6 order from the Southern District of New York
 7 citing -- and actually quoting from a case
 8 called Hoffman versus United States at 341
 9 US 479 and 486, a United States Supreme
 10 Court decision from 1951.

11 Why did that quote strike me as I was
 12 going through the actual issues that are
 13 before the Court on the stay order? And
 14 that is, I think, evidenced, by the quote,
 15 in that personal perceptions of the
 16 peculiarities of the case govern the Court's
 17 determination of the validity of the
 18 assertion of the Fifth Amendment as by the
 19 facts actually in evidence.

20 I think this motion parallels that type
 21 of analysis because of the absolute
 22 peculiarity of this particular case and its
 23 procedural protocol and manifestations.

24 The timeline that's up on the Elmo at
 25 this point is helpful to the Court in terms

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 1 that, that was not a correct statement. He
 2 did not plead guilty to any of those
 3 women -- anything involving those three
 4 women.

5 THE COURT: Thank you both sides for
 6 your written and oral presentations.
 7 Obviously I have given this a great deal of
 8 thought. I have reviewed the materials that
 9 have been provided to me, including a
 10 sampling of the case law that was provided
 11 to the Court.

12 The motion is denied. There was a
 13 phrase that was used in the motion filed by
 14 Mr. Epstein that has some analogous
 15 circumstances here. This talks in terms of
 16 the invocation of the Fifth Amendment. I
 17 will read it to you. But it gave me food
 18 for thought as I was trying to decide -- on
 19 the reviews from the papers -- the next step
 20 in terms of how I was going to deal this and
 21 the subject of oral argument.

22 It says, quote, A necessity of the
 23 validity of an assertion of Fifth Amendment
 24 privilege, the court must look to all of the
 25 circumstances of the case and be governed as

1 of its analysis. And that is, that we have
 2 a situation where much of what was
 3 transpiring in the latter part of 2009 was
 4 the pendency of these three cases: L.M.,
 5 E.W. and Jane Doe all represented by
 6 Mr. Edwards. We had the added complication
 7 of the implosion of the Rothstein firm due
 8 to the heinous activity that Mr. Rothstein
 9 ended up pleading to.

10 We had, as I mentioned last week and as
 11 Mr. Scarola reiterated today, what must have
 12 been an extremely harrowing experience for
 13 anyone concerned, including Rothstein
 14 himself, though I hold no personal empathy
 15 for him. I will, of course, as an aside,
 16 adjudicate the case with full recognition of
 17 his rights and remedies, as I would any
 18 other litigant. But in terms of these
 19 particular facts and the peculiarity of this
 20 matter, it's something that needs to be
 21 addressed and discussed.

22 And the timeline that follows, which is
 23 compelling to the Court and its analysis, as
 24 it was earlier during recent hearings, that
 25 Mr. Rothstein's arrest and the time

1 period -- which may not completely dovetail
 2 with the federal agents raiding the
 3 offices -- was a week before the subject
 4 complaint filed by Mr. Epstein was
 5 initiated.

6 And as I mentioned earlier, what I
 7 wrote in the margin of the binder was what I
 8 perceived to be a reasonable consideration
 9 by counsel for Mr. Epstein and Mr. Epstein
 10 himself as the plaintiff in that 2009 case
 11 that he brought during the time period I
 12 just indicated around December of 2009 and
 13 here we are in 2017, which is actually the
 14 eighth anniversary.

15 So my math skills weren't off too
 16 badly, because the case was brought in
 17 December of 2009. We are here now in
 18 December of 2017.

19 As I indicated, Mr. Epstein brought
 20 this case through counsel. And there is a
 21 well-stated axiom, generally, not in the
 22 legal field, but certainly has application
 23 here, that typically the best defense is
 24 with offense.

25 And by taking the offensive and filing

1 actually, for the Court's purposes,
 2 constructively aware of what would have been
 3 entailed for him to be able to, one, present
 4 and introduce the necessary legal and
 5 factual arguments to support his case; and
 6 two, be able to recognize the potential
 7 exposure that a malicious prosecution claim
 8 could bring at the inception of his filing
 9 of the '09 suit if he couldn't deliver on
 10 what I have globally suggested is an
 11 accountability issue. And this is standing
 12 behind what has been filed.

13 I think amply Mr. Scialo has pointed
 14 out that there were -- what those in the
 15 criminal courts talk about -- critical
 16 stages of the proceeding when things like
 17 Foray (phonetic) inferences have to be
 18 re-evaluated and reasked by the trial judge.

19 But these critical proceedings were set
 20 forth in the civil context to suggest that
 21 they were applicable and appropriate times
 22 when, at the very least, a stay could have
 23 been requested so that during these periods
 24 of times -- which I'm adopting but won't be
 25 reiterating for this record -- will be a

1 the lawsuit -- which he had every right to
 2 do -- as I mentioned earlier, there should
 3 have been a recognition at that very moment
 4 of the potential exposure to the
 5 defendants -- but primarily Edwards -- when
 6 he brought that suit.

7 And that potential exposure should have
 8 been also construed to be that if he did not
 9 have sufficient ammunition -- for whatever
 10 reason -- and I'm not suggesting -- there
 11 are circumstances where people just don't
 12 want to fight anymore -- those are rare, but
 13 they do occur.

14 But there should have been that
 15 recognition that that potential exposure
 16 existed at the time the suit was filed, that
 17 a malicious prosecution case could have been
 18 in the offend and may well have been in the
 19 offend, if the necessary elements from a
 20 legal perspective or the requisite facts
 21 were not able to be proven or at least shown
 22 at the time of summary judgment, which
 23 ultimately occurred, which was not defended.

24 So by taking the approach that
 25 Mr. Epstein through counsel took, he was

1 part of the order if you so desire -- a stay
 2 could have been requested and it could have
 3 been potentially far more compelling at one
 4 of those periods.

5 And it would have been when the motion
 6 was filed, which was approximately two
 7 months prior to the Court, at that point,
 8 setting the case for the December 5 date --
 9 which was supposed to be today -- and not
 10 now when we are several months removed from
 11 trial.

12 The issue of accountability is an
 13 important one and has always been an
 14 important one to this Court. And having to
 15 live with the consequences of one's
 16 choices -- whether they be independent or as
 17 a result of an attorney bringing the
 18 action -- which is that party's own chosen
 19 action, his own claim -- in this case it
 20 would be Mr. Epstein through counsel -- has
 21 to be emphasized.

22 And again, the Court's analysis, though
 23 it will still be concerned about the
 24 timeliness -- timeliness does enter into the
 25 Court's view of this case -- the Court does

1 find it will be prejudicial to the interest
 2 of Mr. Edwards to further delay the matter,
 3 and that an individual on either side is
 4 entitled to some finality.

5 The Court further finds that simply by
 6 virtue of this NPA matter being resolved by
 7 the trial judge or by a jury is applicable
 8 in that Crime Victims' Rights Act case would
 9 not be the end of it. In fact, it would be
 10 shocking to me that an appeal would not be
 11 taken -- no matter whether it was decided by
 12 a judge or jury, or a combination thereof --
 13 that one side or the other would not appeal
 14 the issue. So that would prolong it even
 15 further.

16 So the Court has taken into account all
 17 of the issues and all of the matters in
 18 balancing and trying to maintain the playing
 19 field in as level a manner as the Court can.

20 However, there are going to be, again,
 21 consequences for the actions taken. And by
 22 taking the offensive, this takes us out of
 23 the example that the Court presented
 24 earlier, and that is, if Mr. Edwards had
 25 brought a claim against Mr. Epstein that had

1 your office prepare an order with some
 2 detail, please -- citations as well as
 3 citing to critical junctures, which you have
 4 cited in your memorandum to support the
 5 Court's decision.

6 MR. SCAROLA: And I gather it will be
 7 insufficient to say that the motion is
 8 denied for the reasons cited in the record.

9 THE COURT: Yeah. One of our now
 10 federal court judges was criticized by the
 11 Fourth District Court of Appeal for doing
 12 just that, so we have to --

13 MR. SCAROLA: We will have a detailed
 14 order, Your Honor. We will take the
 15 transcript.

16 THE COURT: Thank you. So I guess it's
 17 back to the evidence.

18 MR. LINK: My turn.

19 THE COURT: Thanks for waiting again.
 20 I appreciate that. Again, I apologize for
 21 cutting you off mid-thought.

22 Off the record.

23 (A discussion was held off the record.)

24 THE COURT: Back on the record, please.
 25 Mr. Link.

1 a relationship to the claims brought by
 2 Mr. Edwards on behalf of his clients against
 3 Mr. Epstein -- and I gave you examples of
 4 defamation -- something of that nature --
 5 some type of tort claim -- I could then see
 6 issues that would interfere with the level
 7 playing field that Mr. Goldberger and the
 8 Court has emphasized, both today and on
 9 other occasions.

10 But that's not the case here.
 11 Mr. Epstein chose the playing field to which
 12 he has now found himself. I'm not here to
 13 criticize, praise or otherwise comment on
 14 that choice, other than to say that once
 15 that choice was made, and once there was no
 16 application for stay at any of those
 17 critical junctures outlined in the Edwards
 18 memorandum, then the Court, as a result,
 19 denies the stay for the reasons that it
 20 stated in the record.

21 All right, again, thank you
 22 Mr. Goldberger. You are free to go if you
 23 wish. Good luck on all the matters that
 24 you're dealing with.

25 Mr. Scarola, again, I would ask that

1 MR. LINK: What we were talking about
 2 before the break --

3 THE COURT: And don't be reluctant to
 4 reintroduce me to where we were.

5 MR. LINK: I was going to start over,
 6 Judge, and make you listen to me twice.

7 THE COURT: That's okay.

8 MR. LINK: Before the break, what I was
 9 saying, Judge, was what I believe is
 10 important and might help us all understand
 11 where we are going and it is this. I have
 12 looked at this case maybe too simply, Your
 13 Honor.

14 THE COURT: Is this in conjunction now
 15 with Jeffrey Epstein's phone records?

16 MR. LINK: It's in conjunction with
 17 Mr. Scarola's confusion and Your Honor's
 18 statement that he was going to be allowed to
 19 prove the truth or falsity of the
 20 allegations of the complaint.

21 What I said to the Court was that we
 22 understand that you have said that. But we
 23 don't believe that's what the law is. And
 24 you asked me to explain why, so that's where
 25 I was headed.

1 THE COURT: Sounds good.
 2 MR. LINK: Maybe I was looking at it in
 3 a too narrow of fashion, because of -- when
 4 I read that Florida Supreme Court case that
 5 we spent the morning on, I read it to say
 6 you look at when the complaint was filed
 7 that day. And you look at all of this
 8 information -- by the way, when I mean you,
 9 I mean you, Your Honor, as a judicial
 10 determination -- unless there is a question
 11 of fact -- and this is what you have to ask
 12 yourself. You have to ask yourself two
 13 things.

14 One, is this information sufficient to
 15 a reasonable person -- it's an objective
 16 standard -- to a reasonable person that they
 17 would initiate the civil lawsuit? There's a
 18 subjective component to it, though, which is
 19 this: that the person who is actually making
 20 the decision cannot know that what they are
 21 looking at is false.

22 So there's an objective component,
 23 which is, is this enough for a reasonable
 24 person. Subjective component is the person
 25 making the decision to initiate the civil

1 proceeding, two false claims.
 2 Here is the first one. Brad fabricated
 3 the three claims against him. Now, we
 4 looked at the complaint -- and I have heard
 5 you say that we are accountable for the
 6 allegations of the complaint. That
 7 allegation is not in the complaint. You
 8 looked at it with me and you saw the word
 9 that said the claims were weak.

10 The words fabricated tie into
 11 Rothstein, not Edwards. Put that aside for
 12 a minute and let's assume, Your Honor, that
 13 this is the statement in the complaint. Is
 14 there a lack of probable cause in a 20-page
 15 complaint with 79 allegations if Mr. Edwards
 16 can demonstrate that one allegation happens
 17 to be untrue? One allegation. Is that
 18 enough for probable cause? What if we --
 19 what if he can't prove that 75 of the
 20 allegations were not false?

21 The jury instructions and the case law
 22 doesn't let you parse through a complaint
 23 and say, uh-huh. I found this sentence that
 24 I don't think you can prove, or I found a
 25 statement that I think is false, therefore

1 proceeding, do they have a good faith belief
 2 that what they're reading or being told or
 3 looking at, connecting the dots, isn't
 4 false.

5 That was important in answering
 6 questions that Mr. Epstein was asked because
 7 there's bit of a disagreement between
 8 Plaintiff's -- Counter-plaintiff's counsel
 9 and us, because we believe Mr. Epstein
 10 answered most -- he didn't answer them all,
 11 Your Honor. You are going to find a couple
 12 that you are going to say, I think that was
 13 related. But he answered a lot of them, and
 14 he gave 9 to 13 pages of testimony and two
 15 affidavits explaining essentially what it
 16 was he looked at that gave him comfort to
 17 bring the suit.

18 What we have focused on since then --
 19 since our involvement in the case starting
 20 on the 29th -- is this -- this is what
 21 Mr. Edwards' counsel sent us last time --
 22 put on the board last time. And this is
 23 where the disconnect is for me. And here it
 24 is. Lack of probable cause as to either or
 25 both two false claims -- not just civil

1 you don't have probable cause.

2 I harken back -- and I hate to say it.
 3 You've made it clear: We are not trying
 4 defamation. But that is a defamation case,
 5 because if I make 100 statements and 99 of
 6 them are accurate but one is false, guess
 7 what? You have a legitimate claim for
 8 defamation.

9 THE COURT: At the same time, again,
 10 I'm not going to suggest to you that there's
 11 always going to be a bright-line separating
 12 defamation claims versus claims of malicious
 13 prosecution. They could often be somewhat
 14 factually analogous.

15 However, this all goes to the global
 16 decision, the global finding by the court,
 17 by the jury, whomever, of weighing that
 18 information that Mr. Epstein had at the time
 19 he filed suit, and arguably through the
 20 continuation of that claim. And just like
 21 anything else, when we instruct the jury,
 22 the jury can make a decision on all or part
 23 of the evidence.

24 They have the wherewithal through
 25 instruction to accept, reject or to do what

1 they wish with respect to opinions of
2 experts. They judge the credibility and
3 thus they infer and draw reasonable
4 inferences from the evidence as to what the
5 witnesses say.

6 Same type of analysis here in the sense
7 that, if it's the Court's responsibility,
8 the jury's responsibility. They can find --
9 the Court can find overriding facts that may
10 be relevant to ultimately the Court's
11 analysis while rejecting or accepting other
12 facts that come up with regard to the
13 Court's analysis.

14 So in a vacuum, we are getting into a
15 little bit far afield of what I would like
16 to get back to, and that is, these
17 individual evidentiary issues -- but -- you
18 know, I don't know where else you want to go
19 on this. Right now it is not before the
20 Court.

21 MR. LINK: It is in a sense, if I can,
22 Judge, which is this. This case has to be
23 tried differently, and the evidence will be
24 different.

25 If, for example -- and this is not

1 whether there was probable cause. And you
2 will look at 15 facts -- so if there are 14
3 that are still good and one goes away, you
4 will make that decision. If five of them go
5 away and there's ten left or four left, you
6 will make the decision.

7 But how do we try this case? Here is a
8 sentence that you pointed out to me when I
9 said, Show me where -- it doesn't say
10 fabricated. You said, Well it says weak.
11 It says weak.

12 Well, how do we try before the jury is
13 that a contested fact where the cases were
14 weak? Do I have to call an expert to give
15 an opinion on the value of the cases at the
16 time? And weak compared to what?

17 THE COURT: I don't know what you're
18 asking me to do right now. All I'm saying
19 is -- all I would suggest to you is they
20 have the burden of proof when it comes to
21 elements in the malicious prosecution case.

22 MR. LINK: Yes, sir.

23 THE COURT: Ultimately, I agree with
24 you that largely it's going to be either the
25 Court's or the jury's determination as to

1 talking about whose burden of proof it is.
2 Mr. Scarola said it's his burden, so I guess
3 he's going to try to prove to the jury that
4 specific allegations in the complaint were
5 untrue. That's what I heard him say he's
6 going to do.

7 If he does that, what does that
8 accomplish? Here is what I mean by that.
9 What the case law tells us is that the jury
10 should make the decision about disputed
11 facts that were relied on by the person that
12 initiates the proceeding -- disputed facts.

13 They are not supposed to look at the
14 sentence and determine if it's true or
15 false. They are supposed to decide
16 if there's -- we say we relied on this fact,
17 they said we didn't rely on this fact.

18 Or -- or if we say we relied on a fact, and
19 Mr. Scarola takes the position that you
20 didn't have a good faith basis to rely on
21 that fact because, then that would be a jury
22 decision about whether we relied on the
23 facts.

24 You would then decide, once the jury
25 determined we either relied on it or not,

1 Epstein's subjective position at the time he
2 filed the suit and, according to the law,
3 continued the prosecution of this case.

4 Now, how you go about that, that's not
5 for me to say. But I agree with you to the
6 extent that there is a subjective element
7 that relates to Epstein's decision-making to
8 file a suit.

9 But, on the other side of the coin, as
10 I indicated last week, that doesn't --
11 again, in my respectful view of the law --
12 end the analysis. Because at the same time,
13 as I pointed to the other day, Mr. Edwards
14 has the opportunity to dispel those claims
15 by Mr. Epstein.

16 Now, that's how the two sides resolve
17 the tension, and ultimately a determination
18 is made by the trier of fact.

19 MR. LINK: If there's a disputed fact.
20 Again, that's sort of my struggle. And
21 maybe it's Mr. Scarola's struggle, which is
22 this. If this is the disputed fact, they
23 say there should have been an allegation
24 that the litigation team, which included
25 Mr. Edwards, knew or should have known that

1 the three-filed cases were weak. Let's just
2 look at that statement.

3 They have the burden of proof and they
4 come forward -- and I guess Mr. Edwards gets
5 on the stand and he says, Jury, these cases
6 were strong. They paid \$5.2 million --

7 MR. SCAROLA: \$5.5 million.

8 MR. LINK: -- \$5.5 million to settle
9 them. I am now going to come forward and
10 put on an expert -- I am going to put
11 someone on to say that's a small number for
12 these cases. These cases are weak, because,
13 look, L.M. worked at a strip club. She an
14 admitted prostitute, call girl. All of
15 these things come into factoring.

16 What I'm asking, Judge, is if we are
17 trying a probable cause/malicious
18 prosecution case, then I would suggest to
19 you that none of the specific allegations
20 can lead to a conclusion of probable cause
21 or not.

22 The overall flavor of the case, the
23 overall complaint, when fairly read,
24 absolutely comes into consideration. It
25 does. Was there a reasonable basis to go

1 MR. SCAROLA: The same as my position
2 with regard to these other exhibits. I
3 don't know what Mr. Epstein is going to
4 attempt to demonstrate with regard to these
5 underlying claims.

6 If he is attempting to prove that they
7 were fabricated, if he is defending against
8 the assertion that these were well-founded,
9 valuable claims, then the phone records may
10 very well become relevant and material,
11 because they include the names and telephone
12 numbers of vast numbers of juveniles who
13 were being sexually abused on a daily basis
14 multiple times a day.

15 They include the names and telephone
16 numbers of other witnesses to that abuse,
17 which form the basis for Mr. Edwards seeking
18 to take their depositions, because
19 Mr. Epstein -- in the underlying cases, as
20 he has in this case, asserted the Fifth
21 Amendment privilege -- was not responding to
22 questions. And so we needed to rely upon
23 the testimony of third parties in order to
24 establish the claims. The telephone records
25 were part of the basis for identifying the

1 forward with this lawsuit? But
2 cherrypicking a sentence or two in the
3 complaint to prove it's falsity doesn't help
4 you or the jury determine probable cause.

5 THE COURT: Again, I don't know how we
6 found ourselves here. I just want to get
7 back to the evidence. Again, I can't be
8 making advisory opinions, orders, whatever
9 the case might be.

10 I want to get back to the individual
11 evidence provisions.

12 MR. LINK: Your Honor, I thank you for
13 allowing me to finish. I appreciate it.

14 THE COURT: We are back on the phone
15 records.

16 MS. ROCKENBACH: Your Honor, yes. I
17 think we are on number ten, my client's
18 phone records. I believe Your Honor has --

19 THE COURT: Yes. You gave those to me.

20 MS. ROCKENBACH: I did indicate that
21 they have nothing to do with what my client
22 knew, what information he relied upon when
23 he instituted the original proceeding.

24 THE COURT: Mr. Scarola, your position
25 on the phone records, please.

1 third parties who we sought to take
2 discovery from.

3 So again, I really think that -- I
4 haven't offered these. I don't know if I'm
5 going to offer them. I won't talk about
6 them unless and until I believe that a
7 reasonable basis exists for me to do that,
8 and then I will address that outside the
9 presence of the jury.

10 I don't know what else I can say with
11 regard to this and all these other matters.
12 We are going through this, and I'm going to
13 say the same thing over again.

14 So, for purposes of brevity, I will
15 tell Your Honor that for future reference, I
16 will simply say same argument. And now you
17 know what it is I am adopting as the same
18 argument.

19 THE COURT: I rarely see you
20 frustrated. I'm glad you're human like the
21 rest of us.

22 MR. SCAROLA: I clearly am, Your Honor.
23 And I'm sorry there's frustration coming
24 through in my voice, but there is
25 frustration in my heart and in my mind.

1 THE COURT: Not a problem.
 2 It is the same ruling. Again, if the
 3 issue is one of reasonable discovery and
 4 why -- and if Mr. Epstein is going to claim
 5 that somehow Mr. Edwards was off on a wild
 6 goose chase, then clearly the fact that he
 7 was seeking to discover these phone records
 8 and the purpose for the discovery would be
 9 appropriate.

10 However, at this juncture, as an
 11 exhibit that is the guts of the phone
 12 records, as a matter of relevancy, as a
 13 matter of privacy -- and I don't see
 14 anything in here with names -- they are just
 15 numbers.

16 MS. ROCKENBACH: Correct. That's
 17 correct.

18 THE COURT: So I'm going to make the
 19 same ruling as I did on number nine.

20 MS. ROCKENBACH: Thank you, Your Honor.
 21 The same argument for Sarah Kellen's phone
 22 records, which I can bring to the bench.
 23 They do not have names. They have numbers.

24 THE COURT: Mr. Scarola has indicated
 25 that would be the same objection. It would

1 ruling -- or at least discussed that code
 2 section in relation to the federal code,
 3 which isn't applicable.

4 This is not a molestation case. The
 5 probable cause affidavits that related to
 6 the criminal investigation are absolutely
 7 irrelevant to this malicious prosecution
 8 case. And if there was any remote relevant
 9 probative value to introducing them and
 10 parading them around the jury to tell the
 11 jury about what probable cause may have
 12 existed in these affidavits, it would
 13 absolutely prejudice my client and he would
 14 not receive a fair trial in this action.

15 THE COURT: Is there anything specific,
 16 Mr. Scarola, that you can think of that
 17 would be in the probation file that the
 18 Court needs to know about now?

19 MR. SCAROLA: Nothing Your Honor needs
 20 to know about now. Same argument.

21 THE COURT: Okay. Same argument. Same
 22 ruling. Again, this would be akin -- to
 23 draw an analogy -- to in a personal injury
 24 action listing the plaintiff's employment
 25 file. And that would carry with it the same

1 be the same ruling.

2 Jail visitation logs. Same arguments,
 3 same ruling.

4 Jeffrey Epstein's probation file.
 5 Let's speak about that.

6 MS. ROCKENBACH: Your Honor, this would
 7 also implicate -- a probation file would
 8 trigger part of the evidence code that
 9 Mr. Scarola referenced earlier, which was
 10 90.404(2). His probation file is akin to
 11 any visitation logs or any aspect of the
 12 criminal action, which we are not trying in
 13 this case. Similar fact evidence of other
 14 crimes, wrongs or acts are inadmissible when
 15 the evidence is solely to prove bad
 16 character and propensity. And that's
 17 90.404(2).

18 Mr. Scarola keeps referring to the
 19 second subsection of that evidence code,
 20 which is subsection B. And it says in a
 21 criminal case in which a defendant is
 22 charged with a crime involving child
 23 molestation, then this evidence becomes
 24 relevant.

25 Your Honor did actually already make a

1 general objection.

2 Now, if there were certain things in
 3 the employment file that would relevant, for
 4 example, there may be something in an
 5 employment file that shows a pre-existing
 6 injury of some sort, then that would be --
 7 that may well be relevant.

8 But simply stating probation file
 9 without any specifics would be the same
 10 ruling. I am sustaining the objection.

11 MS. ROCKENBACH: Thank you, Your Honor.
 12 Same argument for number 15, the
 13 victims' statements to the FBI.

14 THE COURT: We are actually on 14.

15 MS. ROCKENBACH: All probable cause
 16 affidavits. Yes, I indicated that that
 17 would be the same argument, because it
 18 relates to criminal investigation.

19 THE COURT: Same argument?

20 MR. SCAROLA: I would only point out,
 21 Your Honor, that clearly to the extent that
 22 Bradley Edwards had that sworn testimony
 23 when he initiated both his civil lawsuits --
 24 his civil lawsuits, and when he relied upon
 25 that in pursuing discovery, it's obviously

1 relevant and material, depending upon what
 2 Mr. Epstein attempts to say, so it is the
 3 same argument.

4 THE COURT: I am going to defer on
 5 number 14. I think that that is more
 6 specific. I think it is potentially
 7 critical to the analysis as it relates to
 8 the strength of the cases that are involved.

9 I understand Mr. Link's argument
 10 regarding his position. But I also
 11 understand Mr. Scarola's argument regarding
 12 the fact that somehow they have to prove
 13 their probable cause case. And it's just
 14 not going to be Mr. Epstein's objective
 15 position that needs to be heard.

16 All right. Next is number 15.
 17 "Victims' statements to the FBI related to
 18 the criminal investigation of Jeffrey
 19 Epstein."

20 MS. ROCKENBACH: Your Honor, I have a
 21 copy of these if the Court would like to
 22 review them. They were produced by
 23 Mr. Scarola. They are approximately six
 24 pages. But they are absolutely irrelevant,
 25 inflammatory, prejudicial for my client in

1 Mr. Scarola.

2 MR. SCAROLA: Yes. Your Honor, I just
 3 want to supplement my argument in this
 4 respect. We have been focusing on -- in
 5 those comments in particular -- on the
 6 proprietary or reasonableness of Bradley
 7 Edwards' conduct, and whether Jeffrey
 8 Epstein was in a position to consider what
 9 was happening as contributing to a
 10 conclusion that Mr. Edwards was a knowing
 11 participate in a Ponzi scheme and
 12 fabricating claims against him.

13 I think it's important that we
 14 articulate what the probable cause standard
 15 is. And I think that maybe I am in
 16 agreement with opposing counsel, but I want
 17 to be sure that I have stated it in what I
 18 consider to be an appropriate fashion.

19 The issue is, would an objectively
 20 reasonable and caution person -- that's the
 21 objective part of the formula -- knowing
 22 what Jeffrey Epstein knew -- that's the
 23 subjective portion of formula -- have
 24 probable cause to believe that Bradley
 25 Edwards fabricated the claims against

1 this action. Victims' statements. And they
 2 relate to the criminal case.

3 THE COURT: Off the record.

4 (A discussion was held off the record.)

5 MS. ROCKENBACH: Your Honor, I quickly
 6 looked at the names on those particular
 7 victims' statements, and they do not relate
 8 to E.W., L.M., Jane Doe, who were
 9 represented by Mr. Edwards. For that reason
 10 they were not relevant.

11 I know this Court has already said you
 12 were not going to allow or constructively
 13 try any of the sexual abuse/assault claims.
 14 And that is what this will be pointing to.

15 THE COURT: Okay. I have read them.
 16 It is the same argument, same ruling, that
 17 is, that if it comes to a point where there
 18 is a contention by Mr. Epstein that
 19 Mr. Edwards acted in manner that was rash,
 20 that was in a manner that was without
 21 forethought, that he did not properly
 22 discover those issues that are -- that would
 23 form the basis of the claims that were
 24 brought on behalf of the three young women,
 25 then again we will revisit.

1 Jeffrey Epstein and was a knowing
 2 participant in a massive Ponzi scheme.

3 So there is both an objective and a
 4 subjective component.

5 And when we talk about things like
 6 phone records and address book and
 7 appointment books and airplane logs, Jeffrey
 8 Epstein knew about the existence of those
 9 phone records. He knew about the address
 10 books. He knew about the appointment books
 11 and the airplane logs showing that children
 12 were being transported on those jet planes.
 13 He knew what was happening to those children
 14 on those jet planes. He knew some 40
 15 children had reported virtually identical
 16 crimes to law enforcement.

17 So those are all things that he knew.
 18 He knew that he was paying children a bounty
 19 to bring other children, too. He knew he
 20 paid the three victims that are named in
 21 Bradley Edwards' complaints not only \$200
 22 per sexual massage, but also paid them 2 or
 23 \$300 for each other child that they brought
 24 to him. And he specified what it was he
 25 wanted and what would gather a premium and

1 what wouldn't gather a premium.

2 So when we talk about things like, did
3 he know these were strong claims independent
4 of the parade of horribles that he lists
5 there about these young girls --
6 incidentally, the vast majority of which
7 things, if not all of them, occurred after
8 he abused these children.

9 As the sworn deposition of E.W.
10 indicates, she was -- and I think I have
11 already referenced this in prior argument to
12 the Court. She was a middle school student
13 doing well. She was doing well
14 academically. She was participating in
15 extracurricular activities.

16 While she has a difficult home life, it
17 had not impacted upon her personal conduct
18 in any way that brought her in contact the
19 criminal law or in any way whatsoever that
20 resulted in her engaging in the kind of
21 conduct, like stripping, or anything else
22 that she has alleged to have been involved
23 in, which all occurred after Jeffrey Epstein
24 had abused her.

25 So these are things that Epstein knew.

1 I appreciate the Court's concern to keep
2 this focused on the claims of E.W., L.M. and
3 Jane Doe. But that is focus of the claims
4 on L.M., E.W. and Jane Doe. That's what
5 Epstein knew about the strength of their
6 claims.

7 This is not a single, isolated
8 incident. This is not a single, isolated
9 victim. These are not three isolated
10 victims who were abused on a single
11 occasion. This was part of an extraordinary
12 pattern of abuse.

13 And that's why I am suggesting too,
14 Your Honor, that I simply need to adopt the
15 same argument. I'm not going to offer any
16 of this evidence unless and until I satisfy
17 the Court that it's relevant and material.
18 And that's all I can say.

19 THE COURT: In this particular victim
20 statement dated 5/30/2008, it's from a Shana
21 L.R., who I don't believe has anything to do
22 with this particular case -- these three
23 cases, that I'm aware of.

24 And the point I'm trying to make as it
25 relates to these exhibits that are listed

1 from seven down now to where we are -- and
2 that's number 15 -- is that while it is
3 absolutely conceivable that this
4 information -- some of this information may
5 be relevant, what I'm trying to deal with
6 here and distinguish is a discussion about
7 what Mr. Epstein may or may not have known
8 and the actual introduction of the records,
9 which I don't believe have any real
10 probative value themselves. That's a
11 distinction.

12 I don't want a jury getting bound up in
13 trying to locate six phone numbers that may
14 be similar, or six times an individual phone
15 entry is listed, and automatically assume
16 that it may have something to do in
17 particular with one of these three young
18 ladies that Mr. Edwards represented.

19 The same thing with the probation file
20 or the visitation logs. All of those
21 things, while they may have something to do
22 with the competing claims of knowledge,
23 strength or weaknesses of the cases -- all
24 of which, again, despite my disagreement, at
25 least in some regard with Mr. Link -- and

1 those things being relevant to discuss as
2 far as what Mr. Edwards had to sustain his
3 claims, the actual documents themselves,
4 unless there's an issue as to they don't
5 exist, or there never were any phone
6 records, or there never was a flight log,
7 that's a different story.

8 MR. SCAROLA: I take issue with none of
9 what Your Honor said. I am in absolute
10 agreement. I am not even going to offer
11 them unless they fit that pattern.

12 They have been listed here because we
13 are obliged to list them, all exhibits that
14 may reasonably become relevant and material.

15 THE COURT: Fair enough. And I think
16 that's the value of the discussion that we
17 are having here today, that we can narrow
18 some of issues -- narrow the intent of what
19 these documents are sought for reasons --
20 for the reasons why they're sought to be
21 potentially introduced.

22 Again, I don't think it's -- I think
23 it's a good exercise. So let's go ahead and
24 proceed further.

25 MS. ROCKENBACH: Your Honor, number 16

1 is the video of the search warrant of my
 2 client's home -- while being executed, the
 3 search. I don't have the video, but I
 4 presume by that -- it wasn't produced, but I
 5 presume by that description, it is the same
 6 ruling.

7 THE COURT: The same ruling as in 17,
 8 the application for the search warrant is
 9 sustained.

10 MR. SCAROLA: Let me just point out to
 11 Your Honor that the reason why that's listed
 12 is because the victims, including these
 13 three, give detailed descriptions of where
 14 they were in the house and what the interior
 15 looked like. And all of that is
 16 corroborated by the search warrant video.

17 THE COURT: Again, it's with the
 18 proviso and caveat that I will re-examine
 19 each of these exhibits, if need be, when the
 20 context is pointed out. But for now, the
 21 same ruling is being issued.

22 MS. ROCKENBACH: Number 18 -- actually,
 23 17. It's identified on the exhibit list by
 24 Mr. Edwards as the application for a search
 25 warrant of my client's home. And it's

1 possible that by mistake Mr. Scarola's
 2 office produced a different document,
 3 because what was produced in this context
 4 was an order sealing affidavit and
 5 application for search warrant and related
 6 search warrant and inventory in return. And
 7 attached to that were the subpoenas to the
 8 custodian of records for BellSouth, T-Mobile
 9 and Cingular. So it looks like phone
 10 records.

11 MR. SCAROLA: Sounds like the wrong
 12 exhibit.

13 MS. ROCKENBACH: Sounds like the wrong
 14 exhibit, but we would object to -- on the
 15 same basis that the application for the
 16 search warrant of Mr. Epstein's home would
 17 not be relevant, would be prejudicial --

18 THE COURT: I have already indicated
 19 the same as to number 17.

20 MS. ROCKENBACH: Eighteen, Your Honor,
 21 is the complaint.

22 THE COURT: That, again, is typically a
 23 matter of judicial notice, so we will deal
 24 with it, if we need to, at a later time.

25 "All records of homes, properties, bank

1 accounts and any/all records related to
 2 Jeffrey Epstein's assets."

3 MS. ROCKENBACH: That was not produced,
 4 along with this passport. Nineteen and 20
 5 have not been produced. But I presume that
 6 this somehow relates to the punitive
 7 damages.

8 MR. SCAROLA: It does.

9 MS. ROCKENBACH: And there was a
 10 stipulation by my client in discovery -- I
 11 think it was discovery answers -- about net
 12 worth that was in excess --

13 THE COURT: We talked about that.
 14 Mr. Scarola -- and understandably so -- is
 15 not going to accept that stipulation.

16 So eventually, there is going to have
 17 to be further discussion. I presume that's
 18 part of the motion to compel on Thursday.

19 MS. ROCKENBACH: Yes, Your Honor.

20 MR. SCAROLA: It arises in the context
 21 of the Fifth Amendment assertion to requests
 22 for admission and our being able to draw
 23 adverse inferences from those requests.

24 It has to do with responses to
 25 questions during the course of deposition.

1 And, yes, there's a motion to compel,
 2 because we believe that the Fifth Amendment
 3 assertion with regard to some aspects of
 4 what have been requested -- for example,
 5 disclosures to banks -- would not be covered
 6 by the Fifth Amendment. That would be a
 7 waiver with regard to anything that was
 8 disclosed to third parties.

9 Tax returns, same thing. Waiver.

10 THE COURT: Deeds.

11 MR. SCAROLA: Deeds, airplane
 12 registrations.

13 THE COURT: That's fine. We will take
 14 them up, if it's necessary, at the
 15 appropriate time.

16 Twenty is Mr. Epstein's passport.
 17 Again, I think that has to do somewhat with
 18 the issues we discussed as to the flight
 19 logs.

20 Driver's license. I don't know what
 21 that might be relevant to.

22 MR. SCAROLA: Same argument.

23 THE COURT: Same ruling. I will
 24 sustain the objection at this time.

25 List of corporations owned by

1 Mr. Epstein. I presume that has to do with
2 number 19 and the punitive damage claim.

3 MR. SCAROLA: It does, Your Honor.

4 THE COURT: We will deal with that at a
5 later time.

6 MS. ROCKENBACH: Twenty-three through
7 26 have not been produced. And I presume --
8 well, 23 says it's the yearbooks of Jane
9 Doe. But I presume that these other
10 yearbooks would implicate -- I don't know
11 who they would implicate, actually. Quite
12 honestly, they are vague. And I can't see
13 what relevance these vague yearbooks are
14 going to have in the malicious prosecution
15 action.

16 THE COURT: Same argument.

17 MR. SCAROLA: These reflect the
18 appearance of the victims at the time that
19 Mr. Epstein was abusing them, Your Honor, to
20 the extent there might be any argument that
21 he was unaware. And that obviously is not a
22 defense as a matter of law, but it might be
23 argued in litigation if he were to try to
24 contend -- he may try to contend that his
25 abuses of minors were inadvertent and

1 therefore less culpable. And we would show
2 pictures of these victims from which the
3 jury could draw their own conclusion as to
4 whether this was inadvertent.

5 It is not a defense as a matter of law.
6 They were either of age or not of age. And
7 he was either specifically requesting
8 children or not specifically requesting
9 children. But at any rate, they could
10 clearly have relevance in that regard. And
11 again, I'm not offering them at this point.
12 But they are there in the event this becomes
13 an issue.

14 THE COURT: I feel comfortable
15 deferring on 23 through 26. Twenty-seven is
16 the same.

17 MS. ROCKENBACH: As earlier -- as 14,
18 and 15.

19 THE COURT: The same as actually --

20 MS. ROCKENBACH: Seventeen.

21 THE COURT: So the same ruling.

22 MS. ROCKENBACH: Same ruling for 27,
23 which is sustained?

24 THE COURT: Yes.

25 MS. ROCKENBACH: And 23 through 26, you

1 are deferring, Your Honor, until you hear
2 testimony. And it sounds like the door
3 would be that my client didn't know the age
4 of the three clients of Mr. Edwards.

5 THE COURT: At this point, yes.

6 MS. ROCKENBACH: Thank you, Your Honor.

7 Number 28 is similar to what you ruled
8 upon the last hearing, which was number 7,
9 messages taken from Mr. Epstein's home.
10 This is notepads found in Mr. Epstein's home
11 and/or doing trash pulls outside of his home
12 during the criminal investigation.

13 We are not in the criminal
14 investigation. We are not trying that case.
15 And notepads or trash pulled outside my
16 client's home is irrelevant, prejudicial and
17 should not be introduced.

18 THE COURT: Do you have any of those?
19 Have you received copies?

20 MS. ROCKENBACH: I did. Yes, 28, I
21 have a sampling. I think it was a very
22 large exhibit, so -- and you will see
23 that --

24 May I approach, Your Honor?

25 THE COURT: Sure. Okay, again, I have

1 reviewed these materials. I am going to
2 make the same finding I made earlier, the
3 impact upon the issues as to preparedness,
4 knowledge -- as far as Mr. Edwards is
5 concerned -- his diligence as to discovery,
6 if those are called into question, then
7 these may be discussed. The fact that he
8 had these materials probably will be able to
9 be discussed.

10 The actual documentation themselves,
11 though, again, I think would be excessive
12 and would be getting into other matters that
13 would not be germane to the three young
14 women who were involved here.

15 So in essence, it's sustained in part,
16 overruled in part.

17 MS. ROCKENBACH: Number 29 is the Palm
18 Beach State Attorney's Criminal file. It's
19 over 2,000 pages. I have a sampling for
20 Your Honor to look at if you're interested.

21 THE COURT: No. Same ruling. And that
22 is, if it gets to the issue like we
23 discussed -- I'm going to repeat myself --
24 then the fact that's it's a 2,000-page
25 criminal investigation file that Mr. Edwards

1 had some access to formulate his position as
 2 to the legitimacy of these three claims, if
 3 those are called into question -- because
 4 there are that busy equivocation regarding
 5 the legitimacy of those claims -- then
 6 again, it may come into play.

7 The fact that there was a criminal file
 8 prepared -- no surprise to anyone -- won't
 9 be a surprise to the jury. But the
 10 individual pages therein would have to be
 11 further discussed at a later time.

12 Mr. Scarola.

13 MR. SCAROLA: Your Honor, this is one
 14 of the circumstances where the distinction
 15 that I referenced before probably becomes
 16 very clear. That is, during the course of a
 17 criminal prosecution, these criminal files
 18 probably would not have been available to
 19 Bradley Edwards. He may have had the same
 20 information from other sources. But they
 21 obviously were entirely available to Jeffrey
 22 Epstein.

23 So these would have a significant
 24 impact on what Mr. Epstein knew in order to
 25 make a determination as to what a reasonably

1 THE COURT: Again, we will have to
 2 figure that out as we go along.

3 But again, the global ruling is the
 4 individual entries, unless there's something
 5 that is brought to my attention, would not
 6 be subject to admission. But the likelihood
 7 that the significance, if you will, of the
 8 file, the volume of a file would be
 9 particularly important as to Mr. Epstein's
 10 knowledge prior to filing the suit.

11 MR. SCAROLA: Your Honor, I'm sure
 12 Ms. Rockenbach wouldn't intentionally
 13 misrepresent any fact to the Court, but
 14 could we know the basis for her claiming
 15 that Mr. Epstein did not have discovery in
 16 the criminal case?

17 MS. ROCKENBACH: I don't think that my
 18 client would have access -- I could be
 19 wrong, but I cannot imagine my client would
 20 have access to the Palm Beach County State
 21 Attorney's criminal file. I'm not sure how
 22 my client would get his hands on the State
 23 Attorney's file.

24 MR. SCAROLA: Well, I'm sure it's a
 25 reflection of Ms. Rockenbach not doing

1 objective person could or could not rely
 2 upon in forming probable cause.

3 THE COURT: Again, I'm more concerned
 4 with the sanitizing -- it goes more to
 5 attempting to sanitize, to the best of our
 6 ability, and to carve out and distinguish
 7 between the three claims that are brought in
 8 the global investigation that was done. And
 9 I think that it is pertinent to the analysis
 10 here.

11 So again, the compilation of the file
 12 and if Mr. Edwards had knowledge and the
 13 extent of the file -- even if he didn't have
 14 access to it, which would be likely -- then
 15 that would be relevant, as I said, to
 16 Mr. Edwards.

17 Also, I agree with Mr. Scarola that
 18 certainly the sheer amount of the file would
 19 have been known to Mr. Epstein, at least
 20 should have been known by Mr. Epstein. And
 21 that may be something you may or may not ask
 22 him. But that should have been known to him
 23 at time he filed the lawsuit.

24 MS. ROCKENBACH: It was not, Your
 25 Honor. I have been informed it was not.

1 criminal practice. But those of us who have
 2 engaged in criminal practice know that all
 3 evidence in the hands of the State Attorney
 4 is required to be turned over to the defense
 5 in the context of a criminal prosecution.

6 So if it's simply a matter of
 7 Ms. Rockenbach not being familiar with that
 8 procedure, I understand that. But I want
 9 the record reflect there's no basis in the
 10 record to suggest that Jeffrey Epstein did
 11 not have all of the discovery to which he
 12 was entitled in the criminal case.

13 THE COURT: I think it's more a matter
 14 of timing that I am concerned with. And
 15 that is, at the time he filed the suit
 16 versus whenever that information may have
 17 been turned over could be very distinct.

18 MR. SCAROLA: He was well into the
 19 defense of his criminal prosecution at the
 20 time.

21 THE COURT: By December of 2009?

22 MR. SCAROLA: Yes.

23 MS. ROCKENBACH: I do believe, Your
 24 Honor, though, that we are getting very far
 25 astray from probable cause -- which I

1 appreciate Mr. Scarola's assistance with the
 2 knowledge of the criminal -- because I have
 3 not practiced -- I did do some appellate
 4 criminal work when I clerked at the Fourth
 5 District Court of Appeals, but that was a
 6 lifetime ago.

7 But the probable cause issue is not
 8 whether or not my client knew about the
 9 State Attorney's file or the 2,000
 10 documents. It is whether my client had
 11 probable cause to institute the original
 12 proceeding based on a reasonable belief that
 13 Mr. Edwards participated or had connection
 14 to Mr. Rothstein's Ponzi scam. And that's
 15 the defamation by way of the jury
 16 instruction for probable cause, which is
 17 406.4.

18 So I'm not going anywhere outside of
 19 the Florida Supreme Court jury instruction
 20 definition and the case law.

21 But all of these exhibits that we
 22 are -- and the Court is incredibly patient
 23 with us going through -- relate to the
 24 criminal action and the criminal -- we are
 25 now on the Palm Beach County State

1 it. It is in the record.

2 MS. ROCKENBACH: Next are the documents
 3 related to Mr. Epstein's conviction. They
 4 weren't produced. I don't know what precise
 5 documents they were, but I really don't
 6 think it matters, because it relates to the
 7 criminal conviction and his plea colloquy
 8 that was heard before -- I believe it was
 9 Judge Debbie Pucillo on June 30, 2008.

10 This is not irrelevant under 401, it's
 11 prejudicial under 403, and it also
 12 implicates the conviction of certain crimes
 13 of impeachment under 90.610.

14 We discussed this with Your Honor at a
 15 prior hearing on November 29th about a
 16 procedure to do that. You can ask a witness
 17 on the stand. Have you ever been convicted
 18 of a felony or a crime involving dishonesty.
 19 If they say no, then you can absolutely use
 20 documents to impeach their lying under oath.

21 THE COURT: Remember we had that
 22 discussion between credibility and a factual
 23 issue, that being relevancy, whether or not
 24 something tends to prove or disprove a
 25 material fact. That's how we distinguished

1 Attorney's criminal file. So I guess
 2 whether my client had it or not is really
 3 irrelevant. It is an issue of what are we
 4 trying in this case, and we are not trying
 5 he criminal action.

6 THE COURT: I understand. But it gets
 7 back to his knowledge, his accountability,
 8 his constructive knowledge of the
 9 ramifications or potential ramifications
 10 that could arise when he filed this lawsuit
 11 in the first place. And those are all
 12 relevant as far as this Court is concerned,
 13 unless I am shown something otherwise by way
 14 of the case law.

15 So let's move on. I would rather go
 16 forward -- just to give you my thoughts on
 17 the subject.

18 Again, I am always inviting anyone to
 19 bring cases to my attention that may serve
 20 to change my mind, or at least influence the
 21 decisions that I am going to make.

22 MS. ROCKENBACH: Thank you, Your Honor.

23 It seemed Your Honor was sustaining, but I
 24 want to make sure I understand.

25 THE COURT: I have already explained

1 it the last time.

2 Mr. Scarola.

3 MR. SCAROLA: I only wanted to point
 4 out to Your Honor that a comment was made by
 5 Mr. Goldberger earlier today that's relevant
 6 to this discussion, and that is, he said
 7 that Jeffrey Epstein did not plead guilty to
 8 crimes involving these three victims. I
 9 don't believe that that is supported by the
 10 record.

11 I think what the record reflects -- and
 12 Your Honor has a copy of the conviction, so
 13 you might be able to correct me if I'm
 14 wrong, because it's been a while since I saw
 15 them. But I don't think that there is a
 16 victim named, strangely, in those pleas.

17 In fact, when Mr. Epstein was asked who
 18 did he plead guilty to prostituting or
 19 soliciting for prostitution, his response
 20 was, I don't remember. I don't know who it
 21 was that I pled guilty to soliciting for
 22 prostitution.

23 THE COURT: For reasons that may have
 24 to do with the minority status of the
 25 victims, it states -- has Mr. Epstein's

1 name, guilty plea checked off by way of an
 2 X, two case numbers. Charge: felony
 3 solicitation of prostitution count one,
 4 third degree felony; procuring person under
 5 18 for prostitution, second degree felony.

6 It goes on by indicating the
 7 presentence investigation. PSI was not
 8 required or waived. The sentencing; credit
 9 for time served; other comments or
 10 conditions, including the registration and
 11 designation as a sexual offender;
 12 presentation of DNA sample, as is required
 13 in these types of pleas. And no
 14 unsupervised contact with minors, et cetera.

15 MR. SCAROLA: My recollection is --

16 THE COURT: To my knowledge, leafing
 17 through this, there is no specific
 18 designation of the victim by name or
 19 initials.

20 Go ahead.

21 MR. SCAROLA: That is my understanding
 22 as well. And the criminal complaints that
 23 resulted in those guilty pleas had to do, I
 24 believe, with a long list of individuals.

25 So when Mr. Epstein pleads guilty and

1 is unable to identify who it is that he pled
 2 guilty to molesting, I suggest to Your Honor
 3 that that is clearly a probative fact that
 4 the jury can take into consideration in
 5 adjudging the strength of these three cases,
 6 because he didn't say it wasn't one of these
 7 three individuals. What he said was, I
 8 don't remember who it was. And that clearly
 9 is a statement from which the jury could
 10 conclude, particularly in light of all the
 11 Fifth Amendment assertions from which
 12 adverse implication can be drawn when he
 13 refuses to acknowledge he even knew any of
 14 these three girls.

15 Those circumstances taken together
 16 clearly are relevant and material in making
 17 a determination as to the viability of these
 18 three claims.

19 MR. LINK: Your Honor, if I may.

20 Mr. Scarola is dead wrong. He did not plead
 21 guilty to child molestation. You have just
 22 seen the plea.

23 I know you have asked us not to do
 24 rhetoric. That is pure rhetoric. That is
 25 not the plea.

1 Second, in the colloquy, it identifies
 2 the minor victim. It's AD. It is not one
 3 of Mr. Edwards' clients.

4 During Judge Pucillo's colloquy, AD is
 5 the minor that relates to that one count.
 6 But there is nothing in the record there
 7 that suggests child molestation or any plea
 8 to child molestation.

9 THE COURT: It depends how you look at
 10 it. When someone is pleading guilty and is
 11 convicted of procuring a person under 18 for
 12 prostitution, I am not certain that's not a
 13 form of child molestation. But again, I am
 14 not here to parse words.

15 The bottom line is that if it was a
 16 civil action directly related to the
 17 criminal prosecution -- again, my global
 18 understanding is that the plea -- a
 19 certified copy of the plea would be
 20 introduced into evidence.

21 Here, because of the uncertainty, I'm
 22 going to defer ruling on this particular
 23 issue until really further information is
 24 developed in order to make a cogent decision
 25 and a knowledgeable one, for that matter.

1 Same thing with the plea column. If it
 2 doesn't have anything to do with any of the
 3 three individuals that Mr. Edwards
 4 represented, the likelihood is I am going to
 5 sustain the objection.

6 MR. SCAROLA: For whatever assistance
 7 it may be to the Court, I believe that AD is
 8 the child who introduced E.W. to Jeffrey
 9 Epstein and was paid for bringing her to
 10 Jeffrey Epstein the first time.

11 THE COURT: Again, that may have
 12 everything to do with the case that was
 13 tried as to E.W.'s case. Again, those
 14 tangential issues were something that were
 15 of extreme concern for the Court when it
 16 comes to this malicious prosecution claim,
 17 and the continue concern about undue
 18 information, and part of the reason why I am
 19 going to defer, but also keeping that very
 20 much in the forefront of my consideration,
 21 that being undue inflammatory information
 22 being imparted to the trier of fact.

23 Number 32 is, "List of properties and
 24 vehicles in Larry Visoski's, V-I-S-O-S-K-I,
 25 name.

1 He's one of the pilots.
 2 MR. LINK: Yes, sir.
 3 THE COURT: Relevancy?
 4 MR. SCAROLA: Has to do with the
 5 transfer of assets out of Jeffrey Epstein's
 6 name, Your Honor.

7 And again, I don't know that that's
 8 going to become a matter that we need to
 9 deal with. It's listed. My argument is
 10 what my argument was.

11 THE COURT: Thank you. Again, that
 12 would be deferred until it needs to be --

13 MR. LINK: Your Honor, may I interrupt
 14 for one second? Do you mind?

15 THE COURT: Pardon me?

16 MR. LINK: Do you mind if I interrupt
 17 for one second?

18 I know we are getting passed where you
 19 told us we could be, but I thought it might
 20 be helpful if I clarify -- I heard you say
 21 that we have been equivocating -- I don't
 22 think you mean our team, but I think over
 23 the years equivocating, and I would like to
 24 put that to rest if I can. It might help us
 25 going forward if you give me two minutes. I

1 agreement, essentially, to challenge
 2 liability.

3 So there is nothing that we're saying
 4 that took place between the filing in 2008
 5 and when he joins Mr. Rothstein's firm that
 6 we are calling into question as being
 7 fabricated.

8 That doesn't mean that Mr. Epstein
 9 agreed with every single thing these folks
 10 said, or that he thought the amount they
 11 were seeking was reasonable.

12 But I want it to be clear that we are
 13 not intending to introduce evidence that,
 14 from when he was a sole practitioner, that
 15 the three cases were fabricated or made up,
 16 or that the values were fabricated or used
 17 as part of a Ponzi scheme.

18 All of the conduct that we have focused
 19 on takes place between April 9, '09, when
 20 Mr. Edwards joins the Rothstein firm and
 21 when he leaves.

22 And one of the things this Court has
 23 said that I think is really important -- and
 24 I understand your ruling -- you and I have a
 25 little disagreement about the way we think

1 know we are wrapping up now anyway.

2 THE COURT: Sure.

3 MR. LINK: If you don't mind.

4 THE COURT: Not at all.

5 MR. LINK: So there is no equivocation
 6 about this. And I want to say these words
 7 as carefully as I can, Your Honor. I can
 8 never speak in final draft like Mr. Scarola
 9 does, but I would try to get to at least a
 10 rough draft.

11 Here is what I mean. The lawsuits
 12 filed by Mr. Edwards were initiated in 2008
 13 when he was a sole practitioner.

14 During that time period when he filed
 15 them is when Mr. Epstein was serving time in
 16 jail and is subject to the non-prosecution
 17 agreement. We have never taken -- we are
 18 not taking the position -- we are not taking
 19 the position for this trial that the filing
 20 of those three lawsuits were a fabrication.

21 During that time frame, pursuant to the
 22 NPA, Mr. Epstein was not permitted to defend
 23 the merits -- he was allowed to challenge
 24 the amount of damages they were seeking, but
 25 he was not allowed under the non-prosecution

1 it should go, but that happens to be almost
 2 every day in the courtroom. But you have
 3 made it really clear that we have to stand
 4 behind the allegations of the complaint.

5 And I'm taking Your Honor as saying
 6 that literally, that the plaintiff, too,
 7 doesn't get to come in and say words that
 8 aren't in the complaint, that they have to
 9 point to words where it says there was a
 10 fabrication and who made that fabrication.

11 The word that you pointed to was the
 12 word weak. And we're going to have a trial
 13 over whether the cases were weak or not weak
 14 to somebody's subjective level.

15 But I want to be sure that it's really
 16 clear, because all the things we've been
 17 talking about -- the criminal activity, the
 18 arrest records, the flight logs -- all of
 19 that relates to, in my view, none of the
 20 activity that is from April 9th, '09
 21 backwards -- April 9, '09 backwards -- I may
 22 have misspoken. I will clarify that in a
 23 second.

24 And what I mean by that is this. The
 25 cases that were filed by Mr. Edwards, he had

1 probable cause to file them. We are not
 2 saying that he didn't. We are not
 3 challenging his bringing those cases, and we
 4 are not going to complain about those cases.
 5 So information that led up to an arrest
 6 for phone records wouldn't only come in if
 7 we were saying those three cases in 2008
 8 were fabricated. We're not saying that.
 9 We're not saying that at all.

10 What I'm hearing we are going to be
 11 doing in this trial is trying three
 12 molestation cases. These three victims --
 13 these three plaintiffs are going to get on
 14 the stand and we are going to try the
 15 molestation case. Were they touched? Where
 16 were they touched? When were they touched?
 17 How many times were they touched? What did
 18 they look like? What's their emotional
 19 reaction to it? Have they suffered damages?
 20 Have they become strippers as a result of
 21 the touching? That's what we're talking
 22 about trying in this malicious prosecution
 23 action.

24 THE COURT: I am not sure we have been
 25 in the same courtroom. That's fine if you

1 THE COURT: I think that's what
 2 Mr. Link has offered.

3 MR. SCAROLA: I thought that that's
 4 what it was, but I want that -- that's an
 5 important stipulation. There ought not to
 6 be any ambiguity.

7 THE COURT: Mr. Link, are you willing
 8 to stipulate that the actions brought by
 9 Mr. Edwards on behalf of the three
 10 individuals that we have listed by way of
 11 either initials or Jane Doe that have been
 12 at center of this controversy, were brought
 13 in good faith, and that the allegations were
 14 well-founded?

15 MR. LINK: There's a distinction, and
 16 that's this. Yes, they were brought in good
 17 faith. Can I say all of the allegations are
 18 true? I can't say that, Your Honor. We
 19 never put them to the test because we
 20 couldn't.

21 I didn't represent Mr. Epstein at that
 22 time, so I think -- when you ask me would I
 23 say everything that was pled was true, I
 24 can't say that.

25 THE COURT: But you are saying you're

1 are under that impression.

2 Again, I am not here to answer
 3 questions or to give advisory opinions or
 4 make advisory statements. All I'm trying to
 5 do here today is trying to slog through as
 6 much as this evidence as I can to determine
 7 whether or not, at least on their faces, it
 8 would be admissible, it would be deferred;
 9 admissible and granted in part; is the
 10 objection sustained in part, denied in part,
 11 overruled in part; whatever the case might
 12 be.

13 But I would like to get back to that
 14 and use the few more minutes to --

15 MR. LINK: Do you mind if I just see
 16 what I just misstated so I can fix it on the
 17 record if I need to? It will take me 10
 18 seconds.

19 MR. SCAROLA: If Mr. Link is offering a
 20 stipulation that allegations in the
 21 complaints on behalf of E.W., L.M. and Jane
 22 Doe as filed by Bradley Edwards were
 23 well-founded allegations, I will accept that
 24 stipulation, and that may help to abbreviate
 25 some of the issues that we have been facing.

1 willing to stipulate that they were all made
 2 in good faith?

3 MR. LINK: Yes, sir, absolutely.

4 THE COURT: So stipulated. Thank you.
 5 That can be typed up and brought to the
 6 Court's attention, if necessary, during the
 7 pendency of litigation.

8 MR. LINK: Thank you, Your Honor. I
 9 hope my stipulation helped.

10 THE COURT: All right, we are up to
 11 number 40?

12 MS. ROCKENBACH: I think we were at 33.
 13 I wish we were at 40.

14 THE COURT: We did 32.

15 MS. ROCKENBACH: We did 32.

16 THE COURT: I indicated that 35 is the
 17 next highlighted one.

18 That again, is a matter judicial
 19 notice, and depending upon whatever
 20 evidentiary value it may have, those are
 21 just answers in affirmative defenses in the
 22 civil cases against him.

23 MS. ROCKENBACH: Your Honor, I'm sorry.
 24 I think we also objected to 33.

25 THE COURT: I don't have it

1 highlighted.

2 MR. SCAROLA: I don't have it
3 highlighted on mine either.

4 THE COURT: Responses to requests for
5 production, requests for admission, answers
6 to interrogatories in this matter. And then
7 there's a list of about 10 or so cases.

8 MS. ROCKENBACH: Those were not this
9 case before you in division AG. And this
10 case number, you can --

11 THE COURT: You're talking about AB?

12 MS. ROCKENBACH: Yes. These are all
13 '08 cases, '09 cases. I presume they are --

14 Your Honor, perhaps Mr. Scarola can
15 tell us the relevance, but they would not be
16 relevant to this action.

17 Bringing in discovery from other
18 lawsuits seems to be creating mini-trials
19 again within this suit.

20 THE COURT: Well, depending upon the
21 nature of the discovery, and obviously
22 depending upon its relevance to the lawsuit
23 that we are dealing with here, things like
24 requests for admissions may be, pursuant to
25 the law, transferable to a similar case.

1 He had the assistance of the University
2 of Utah law professor Paul Cassell. So his
3 motive was to escape or reduce his liability
4 in a large number of pending civil actions
5 and to escape liability for an even larger
6 number of potential criminal prosecutions.

7 While the limitation that Your Honor
8 has described applies to the probable cause
9 issue for the reasons that Your Honor has
10 stated, those reasons have no applicability
11 when it comes to talking about motive and
12 malice.

13 When it comes to talking about motive
14 and malice, I respectfully suggest the jury
15 needs to understand why it is that somebody
16 would take the risk of filing a malicious
17 lawsuit, what did he have to gain by doing
18 that.

19 And what he had to gain was not simply
20 to influence Bradley Edwards' prosecutorial
21 decisions with regard to three cases, but to
22 influence Bradley Edwards' decisions with
23 regard to a large number of other pending
24 civil lawsuits, and even more significantly,
25 a claim that could expose Jeffrey Epstein to

1 Answers to interrogatories, the same thing.
2 Those things that are stated under oath have
3 a more concrete type of affect than those
4 that are not stated under oath.

5 So what's your position, Mr. Scarola?

6 MR. SCAROLA: Let me just state
7 broadly, Your Honor, that as has been
8 acknowledged in earlier argument before the
9 Court, there is clearly an issue with regard
10 to motive and intent on Jeffrey Epstein's
11 part. And it is our theory of the case that
12 Jeffrey Epstein singled out Bradley Edwards
13 because he was leading a joint prosecution
14 effort that included a number of other
15 lawyers prosecuting multiple other cases,
16 and that Brad was singled out, not only
17 because of his leadership role, but because
18 he faced a particular vulnerability.

19 And what Mr. Epstein was attempting to
20 do was to extort Bradley Edwards into either
21 abandoning or compromising the interest of
22 his clients and backing off on the
23 prosecution of the Crime Victims' Rights Act
24 case, which Mr. Edwards was prosecuting on a
25 pro bono basis almost independently.

1 spend the rest of his life in jail.

2 So that's the relevance and materiality
3 that we have not directly addressed yet that
4 does arise when we start talking about why
5 are we going to be talking about all of
6 these other claims.

7 Your Honor is right. There are
8 specific admissions included within those
9 other pleadings. But the mere existence of
10 those other cases that were being prosecuted
11 on a coordinated basis does make a very
12 significant difference in terms of motive.

13 Thank you, sir.

14 THE COURT: Okay. Thank you as well.

15 Again, I am going to have to take these
16 up on an issue-by-issue basis in order to
17 determine the relevancy.

18 Thirty-five, again, are the answers to
19 affirmative defenses in all civil cases
20 against him. Same ruling. I am going to
21 have to take those up on an issue-by-issue
22 basis.

23 Thirty-six. All complaints in which
24 Epstein was a defendant, same ruling. I
25 will have to take those up on an individual

1 basis. In other words, that means that I'm
2 going to defer.

3 The newspaper articles, online articles
4 or publications related to Jeffrey Epstein.

5 MS. ROCKENBACH: Number 40 was not
6 produced. Actually, Mr. Scarola and I can
7 get together and look at articles. There
8 might be some that I agree to.

9 MR. SCAROLA: They were produced in
10 connection with Mr. Jansen's report. You
11 have a copy of every one of them.

12 MS. ROCKENBACH: Okay, so Jansen's
13 report. So then this exhibit goes to
14 Mr. Jansen, which I have a motion to strike
15 and preclude that is in draft form that I
16 was working on last night. So I think then,
17 perhaps, the Court can take that up in the
18 context of Mr. Jansen's testimony and that
19 motion in that, Mr. Jansen is a damages
20 expert that has testified about defamatory
21 statements.

22 What I started to say is, I would agree
23 to some newspaper articles that my client
24 relied on in bringing the original
25 proceeding, because he has testified that he

1 that now, as well.

2 The video footage of the walk-through
3 site inspection of Epstein's home is
4 probably likely to closely resemble that of
5 punitive damages, although it may be also
6 this issue of whether or not there's going
7 to be an exception taken to -- strike
8 that -- to any of the individuals who are at
9 issue, and their memory as to whether or not
10 they recall what, if anything, maybe in or
11 not in Mr. Epstein's home, and could be an
12 issue of credibility and could be supported
13 by way of the video.

14 Again, I will take that up if that
15 becomes an issue later on.

16 The properties, cars, boats and planes
17 of Mr. Epstein, again could be taken up
18 later, if it becomes an issue.

19 Probable cause affidavits prepared
20 against Jeffrey Epstein and Sarah Kellen,
21 same ruling I made earlier regarding
22 probable cause. If the affidavit was
23 prepared against Epstein himself, then it's
24 relevant, unless it relates to any issues of
25 Mr. Edwards' knowledge and his diligence,

1 relied on these newspaper articles that
2 connected Mr. Edwards to Mr. Rothstein's
3 Ponzi scheme and that formed, in part, the
4 basis for his probable cause to originate
5 the proceeding.

6 But as to the mountain of newspaper
7 articles or periodicals or Internet hits
8 that Dr. Jansen reviewed -- and I guess are
9 attached to his report that I'm now hearing
10 are Exhibit 40 -- we would absolutely object
11 to, because they are not relevant in the
12 malicious prosecution action.

13 MR. SCAROLA: If we're going to take up
14 Mr. Jansen in response to a motion that we
15 haven't seen yet, may I suggest that we take
16 up Mr. Jansen in response to a motion --

17 THE COURT: At this point, to try to
18 marshal the number of articles, online
19 articles, newspaper articles and
20 publications related to Jeffrey Epstein is
21 close to impossible, so I'm not going to get
22 into that right now.

23 Report and analysis of Epstein's
24 assets, again, likely goes to the punitive
25 damages aspect. I'm not going to get into

1 and the like, relating to his preparation of
2 his cases.

3 Forty-five. Documents relating to or
4 evidencing Epstein's donation to law
5 enforcement.

6 MS. ROCKENBACH: Irrelevant and
7 prejudicial, because then it reflects
8 poorly. It's an insinuation that our system
9 can be purchased, and that's just
10 inappropriate. It's not appropriate for a
11 malicious prosecution action whatsoever.

12 THE COURT: Well, the likelihood,
13 again, I am going to sustain the objection,
14 unless I find that -- something that might
15 have something reasonably to do with this.
16 I understand the intent. But again, any
17 probative value would be materially
18 outweighed by the prejudice and the
19 relevance.

20 Forty-six. Victim notification letter
21 from the U.S. Attorney's Office to victim.
22 Again, I think that more closely aligns
23 itself with that victims' rights case that's
24 being brought.

25 Again, I will sustain until such time

1 as I find it may have something to do with
2 the issues I described earlier.

3 Mr. Dennison's -- Dr. L. Dennison
4 Reed's report of victim. That's an expert?
5 I don't know what that is.

6 MS. ROCKENBACH: Ask Mr. Scarola.
7 Psychological examination of Shana L.R.
8 This is something that was in the federal
9 court action.

10 THE COURT: That was the same lady I
11 tried to protect by not using her last name.

12 MS. ROCKENBACH: I apologize, Your
13 Honor, and agree to strike that.

14 THE COURT: It's stricken. It will
15 Shana R., middle initial L. It may have
16 been a two-part name. Just identify her as
17 Shana L.R. That would be the designation we
18 use.

19 MS. ROCKENBACH: I fail to see the
20 relevance of a psychological report.

21 THE COURT: Same ruling. Again, it
22 doesn't have anything to do with the three
23 ladies involved here.

24 Palm Beach Police Department incident
25 report. Does that have anything to do with

1 indicated. And that it would not be
2 necessarily the contents of the exhibit, but
3 the ability to speak generically about the
4 fact that he had those exhibits on hand when
5 he did what he did.

6 MR. SCAROLA: Thank you.

7 THE COURT: Thanks.

8 Same thing with 52, same ruling.

9 Who is Alberto Pinto? What does he
10 have to do with this?

11 MS. ROCKENBACH: This is a contractor
12 who my client hired to do a housing project.
13 There is no relevance. We read the letter.
14 We provided it to the Court.

15 THE COURT: Anything, Mr. Scarola, on
16 this?

17 MR. SCAROLA: Same position, Your
18 Honor.

19 THE COURT: Same ruling finding it to
20 be irrelevant, unless otherwise shown to the
21 Court to relate to issues pertaining to
22 those that the Court has indicated or others
23 that may come up later on down the line. I
24 am preliminarily going to sustain the
25 objection.

1 any of the three people here?

2 MR. SCAROLA: I'm sorry. Was that a
3 question, Your Honor?

4 THE COURT: Yes.

5 MR. SCAROLA: I believe it does.

6 Again, I don't intend to offer it until such
7 time as I have established its relevance.

8 THE COURT: Same argument. And at this
9 point -- thank you. That will be sustained,
10 unless otherwise necessary.

11 MS. ROCKENBACH: I don't have copies
12 of --

13 THE COURT: Same thing with 49. Same
14 thing with 50. Same ruling with regard to
15 51.

16 MR. SCAROLA: I would only point out --
17 when Your Honor is saying the same ruling,
18 I'm sorry but I'm really not --

19 THE COURT: Sustained, unless there's
20 some reason for it to be provided as it
21 relates to the three plaintiffs that
22 Mr. Edwards represented, or it has to do
23 with issues concerning his preparation, his
24 evaluation of the cases, and all of the rest
25 of those things that I have already

1 Bank statements, tax returns have to do
2 with the punitive aspects. I will defer on
3 those.

4 MC2 emails. MC2 is another person who
5 has sued Mr. Epstein?

6 MS. ROCKENBACH: I do not know that
7 exhibit. MC2 was the investing company that
8 was defrauded by Mr. Rothstein.

9 THE COURT: I can't keep track --

10 MS. ROCKENBACH: No. That's not right.
11 I got that wrong. I don't have these
12 emails. I don't.

13 THE COURT: Can anybody answer who MC2
14 may be?

15 MR. SCAROLA: No, sir.

16 THE COURT: We will have to take a look
17 at those at a different time. At this point
18 I will reserve.

19 DVD of plea and colloquy. We talked
20 about that earlier. Sustained, unless it
21 becomes an issue we need to deal with later
22 on. Preliminarily it's sustained.

23 Transcript of plea and colloquy taken
24 on 6/30/08. Same ruling.

25 Massage table. Again, unless it

1 becomes an issue as to one of these people
 2 indicating that -- strike that.
 3 Somebody that may indicate that a
 4 massage was done, someone denying the
 5 massage table ever existed, I don't think
 6 it's relevant.

7 Again, it may come up as to massages
 8 being done and that type of thing, but the
 9 actual table is a good exemplar of going
 10 beyond, over the top of what we need to do
 11 here, that is, to bring the actual table.
 12 It's not like those instances where a
 13 vehicle is actually brought into a
 14 courtroom, or part of a vehicle is brought
 15 in for the jury to use the vehicle outside
 16 the courthouse. The vehicle is the
 17 actual --

18 MR. SCAROLA: I don't anticipate
 19 bringing a massage table in, sir.

20 THE COURT: All right. That's good to
 21 know. Thank you.

22 No contact orders entered against
 23 Epstein, criminal score sheet regarding
 24 Epstein, documents evidencing Epstein's
 25 community control and probation, Epstein's

1 particular.

2 THE COURT: I will take a look at that
 3 when the time comes, if it comes at all.

4 Thank you.

5 Booking photographs. Again, same
 6 ruling as I made on the other matters
 7 regarding the criminal aspects of the case.

8 MR. SCAROLA: This would simply be a
 9 photograph, Your Honor.

10 THE COURT: What's its relevancy?

11 MR. SCAROLA: I'm not sure Mr. Epstein
 12 is going to be here.

13 THE COURT: Are you planning to
 14 subpoena him?

15 MR. SCAROLA: No, sir. No. If he
 16 chooses not to be here, I have videotaped
 17 deposition.

18 THE COURT: That's fine.

19 MR. SCAROLA: I want to be able to
 20 identify him as the person who got
 21 convicted.

22 THE COURT: It could be duplicative of
 23 a video.

24 MR. SCAROLA: It may be. Again, I just
 25 want to explain to Your Honor that's why

1 sex-offender registrations.

2 MR. SCAROLA: May we stop there?

3 THE COURT: Yes.

4 MS. ROCKENBACH: Before we stop, Your
 5 Honor, was about to rule on 60 through 62.

6 THE COURT: Sixty through 62 is
 7 sustained for the reasons that I've already
 8 earlier indicated on the record.

9 Sixty-three. Epstein's sex offender
 10 registrations.

11 MR. SCAROLA: Yes, as part of
 12 Mr. Epstein's sex offender registration,
 13 particularly in the state of New York -- I'm
 14 not sure the extent to which it applies
 15 elsewhere -- he was obliged to disclose his
 16 ownership interest in vehicles, airplanes
 17 and residences, that is, he had to list all
 18 of those things. And one of the ways that
 19 we have identified Jeffrey Epstein's assets
 20 is through those sex offender registration
 21 disclosures that he was obliged make and did
 22 make.

23 So it has to do with punitive damages
 24 in addition, perhaps, to something else.
 25 But it has to do with punitive damages in

1 it's listed.

2 THE COURT: I will defer.

3 CAD calls. C-A-D.

4 MR. SCAROLA: I can't tell you.

5 THE COURT: Sustained.

6 MS. ROCKENBACH: I have a copy of the
 7 exhibit that Mr. Scarola provided. They are
 8 Palm Beach Police Department --

9 THE COURT: I have already sustained
 10 the objection for reasons that were
 11 indicated earlier.

12 List of Epstein's house contacts. You
 13 have that one?

14 MS. ROCKENBACH: I do. May I approach,
 15 Your Honor?

16 THE COURT: Sure.

17 MS. ROCKENBACH: It's a document titled
 18 Vehicles, Mail Deliveries --

19 May I retrieve these?

20 THE COURT: This looks like his
 21 vehicles, grocery stores that he shops at,
 22 health and beauty, utilities, storage, mail
 23 and delivery services, maintenance, travel,
 24 banking, bicycles, bookstore, cleaning
 25 service. Entertainment: Breakers, comedy

1 corner, Mar-a-Lago. It goes to different
 2 servicing companies, such as extermination
 3 type of thing. It has a list of names and
 4 numbers.

5 Okay, again the same ruling that I made
 6 earlier, and that is, that it would not be
 7 relevant, except for issues that I have
 8 discussed earlier that may impact upon
 9 particularly Mr. Edwards' diligence, what he
 10 had, particularly at the time of his employ
 11 with the Rothstein firm, and those things I
 12 have already mentioned in the record.

13 Documents related to Epstein's
 14 investments would be a punitive damage issue
 15 that we will take up at a later time.

16 Letter from Chief Reiter from the Palm
 17 Beach Police Department to Barry Krischer,
 18 it should be, instead of Krischler, I
 19 presume.

20 MS. ROCKENBACH: That's correct. It's
 21 dated May 1st, 2006.

22 THE COURT: Let me take a look at it.

23 Sixty-nine is a list of planes owned by
 24 Epstein. That would be, again, reserved, if
 25 necessary, for the punitive damages

1 investigating office, through its chief, is
 2 challenging the way in which his cases are
 3 being treated is relevant and material with
 4 regard to his taking the highly unusual step
 5 of filing a baseless malicious claim against
 6 Bradley Edwards, that is, Mr. Epstein filing
 7 that claim against Bradley Edwards.

8 THE COURT: I'm sorry.

9 MR. SCAROLA: Mr. Epstein knows that he
 10 is facing very substantial jeopardy. And
 11 that letter is corroborative of that. It's
 12 part of what he knows when he files the
 13 claim.

14 THE COURT: The objection is sustained.

15 MS. ROCKENBACH: The next set of items
 16 70 through 74, they are all letters from
 17 Mr. Epstein's lawyer, Guy Fronstin, prior
 18 counsel, to the assistant State Attorney
 19 Lanna Belohiavek from the Office of the
 20 State Attorney. They are all different, but
 21 they all relate to -- for instance, Exhibit
 22 Number 70 is a disclosure of third-party
 23 attorney fee payment where my client had
 24 offered to pay for his house manager, who
 25 was going to be giving a statement to the

1 component of the case.

2 Did you see these letters?

3 MR. SCAROLA: It's been a long time.

4 THE COURT: I couldn't imagine what
 5 relevancy it would have to do with this.
 6 Unless you can provide me any additional
 7 information, it's sustained.

8 Fronstin. Was he one of Mr. Epstein's
 9 attorneys at one time?

10 MS. ROCKENBACH: Yes, Your Honor.

11 And these all are -- Exhibits 70, 71,
 12 72, 73, 74, are all letters from --

13 MR. SCAROLA: I'm sorry. I'm having
 14 difficulty doing two things at once. I'm
 15 reading this letter. I would like -- I
 16 would like to comment that the Palm Beach
 17 Police Department was the principle
 18 investigating agency with regard to these
 19 claims. And obviously, the chief's position
 20 with regard to these claims is reflective of
 21 the quality of the claims that was called
 22 into question in the complaint by
 23 Mr. Epstein.

24 So to the extent that Mr. Epstein is
 25 aware of the fact that the chief

1 assistant state attorney. And it was in
 2 compliance with ethical rules. It
 3 actually is -- but it has no relevance.
 4 That's the point. It actually is a good
 5 thing, but here it shouldn't come in,
 6 because we are just getting too far astray.

7 I have these documents and these
 8 folders if Your Honor would like to look at
 9 them.

10 MR. SCAROLA: Part of what all the
 11 attorneys prosecuting claims against Jeffrey
 12 Epstein were dealing with, including Brad
 13 Edwards, was the degree of control that
 14 Mr. Epstein was exercising over various
 15 witnesses. And those letters evidence the
 16 degree of control that Jeffrey Epstein was
 17 exercising over various witnesses who were
 18 part of the then ongoing criminal
 19 investigation. That is why such things as
 20 the depositions of pilots and the
 21 subpoenaing of flight logs and the necessity
 22 to try to find third parties who were not
 23 under Mr. Epstein's influence to give sworn
 24 testimony concerning what was going on on
 25 airplanes became necessary.

1 MS. ROCKENBACH: They may be relevant
 2 if we were trying Mr. Edwards' cases that
 3 were settled. They are not remotely
 4 relevant in this action.

5 THE COURT: I tend to agree. Again,
 6 for the same reasons that I ruled earlier, I
 7 sustain the objection to these letters from
 8 this attorneys -- Mr. Epstein's attorneys to
 9 the assistant State Attorney.

10 Mr. Goldberger's letters, 75.

11 MS. ROCKENBACH: May I approach, Your
 12 Honor? It is dated June 22nd.

13 THE COURT: Off the record.

14 (A discussion was held off the record.)

15 THE COURT: I made an error confusing
 16 Mr. Salnick with Mr. Krischer. I apologize
 17 to them both. So I will need to take a look
 18 at that letter from Chief Reiter again and
 19 see if it changes my thought process in that
 20 regard.

21 MS. ROCKENBACH: Your Honor, I have it,
 22 if you want to take another look. It
 23 encloses a probable cause affidavit and case
 24 filing, packages from the police
 25 department -- Palm Beach Police Department

1 have made earlier with regard to other
 2 matters concerning the criminal file.

3 MS. ROCKENBACH: Thank you.
 4 THE COURT: The documents related to
 5 the rental of vehicles for Vanessa Zalis.
 6 Who is she?

7 MS. ROCKENBACH: I don't know that -- I
 8 would have to have Mr. Scarola explain why
 9 rental -- and I don't even see rental
 10 agreements. I would expect to see a rental
 11 car: Alamo, Hertz or something. This
 12 document that was produced is FedEx labels,
 13 priority overnight FedEx labels to my client
 14 at his Palm Beach residence with a
 15 handwritten note and it says, "Contract up
 16 on February 2nd." Then it has a handwritten
 17 note Dollar Rent a Car. No relevance.

18 THE COURT: I don't know who this is.
 19 Do you have any idea who we are talking
 20 about here?

21 MR. SCAROLA: Same argument.

22 THE COURT: Same ruling.
 23 Ted Shed.

24 MR. SCAROLA: Same argument.

25 THE COURT: Same ruling.

1 from the chief of police.

2 THE COURT: Sure. Sorry about that.
 3 I'm going to take the same position as
 4 to number 68, so it's sustained for the
 5 reasons I have earlier indicated.

6 Number 75, the letter from
 7 Mr. Goldberger to Mr. Krischer.

8 Do you want to comment Mr. Scarola?

9 MR. SCAROLA: No, Your Honor. Same
 10 argument.

11 THE COURT: Same ruling. I'm going to
 12 sustain it. Also, it carries with it the
 13 potential of Mr. Goldberger having to be a
 14 witness. I just don't see it as necessarily
 15 even tangentially related to the three cases
 16 that we have.

17 I don't know if one of these young
 18 women were part of this. The one who is
 19 described here is not listed, even by
 20 initials, so I will take the same position I
 21 have taken earlier.

22 MS. ROCKENBACH: Your Honor, number 76,
 23 I'm not sure if you need the packet, but
 24 it's subpoenas that were issued.

25 THE COURT: No. It's the same ruling I

1 Documents related to the property
 2 searches of Jeffrey Epstein's property.

3 MR. SCAROLA: Same argument.

4 THE COURT: Same ruling.

5 Arrest warrant of Kellen?

6 MR. SCAROLA: Same argument.

7 THE COURT: Same ruling.

8 Police report regarding Alexandra Hall
 9 picking up money, dated 11/28/04.

10 MR. SCAROLA: Same argument.

11 THE COURT: Same ruling. These are all
 12 sustained, unless shown to the Court later
 13 that there's a particular relevance to any
 14 of these documents. That's the same ruling
 15 I have indicated.

16 Eighty-two. List of Trilateral
 17 Commission Members of 2003. Do you know
 18 what that is?

19 MS. ROCKENBACH: I still don't, even
 20 after looking at the document. But it is on
 21 a website Bible Believers.org, a nine-page
 22 document with individual names of people.

23 THE COURT: It's refreshing the Bible
 24 is being mentioned during all of this.

25 MR. SCAROLA: Same argument.

1 THE COURT: Same ruling.
 2 Alan Dershowitz's letter dated
 3 April 19th, '06, and statute 90.410. I
 4 guess this has to do with similar activity.
 5 Same argument?
 6 MR. SCAROLA: This is slightly
 7 different, Your Honor. This has to do with
 8 the allegation that there was a significant
 9 change in the approach to prosecution of
 10 these cases after Brad Edwards was employed
 11 at RRA. And one of the elements that is
 12 cited to is that he begins to take discovery
 13 with regard to other victims.
 14 In fact, there were multiple activities
 15 that occurred prior to Brad's employment
 16 with RRA that were directed at the discovery
 17 of matters relating to other victims. And
 18 the federal statute requires that a notice
 19 be given to the other side of the intent to
 20 rely upon evidence with regard to other
 21 victims.
 22 THE COURT: Did you take
 23 Mr. Dershowitz's deposition as it relates to
 24 this case?
 25 MR. SCAROLA: No, sir. But I have had

214
 1 the pleasure of deposing Mr. Dershowitz.
 2 THE COURT: Not as it relates to this
 3 case?
 4 MR. SCAROLA: No.
 5 MS. ROCKENBACH: I do not have a copy
 6 of the letter, Your Honor. It was not in
 7 production.
 8 THE COURT: I will defer on that one.
 9 Frontin letter. Again, goes with the
 10 same protections that I earlier indicated.
 11 I will sustain.
 12 Epstein's account information.
 13 MS. ROCKENBACH: I don't know what that
 14 means. It was not produced.
 15 THE COURT: It will have to be produced
 16 in the meantime.
 17 MR. SCAROLA: Yes. I hope it will be.
 18 It is listed, although it has not yet been
 19 produced by Mr. Epstein in anticipation of
 20 his being ordered to produce it.
 21 THE COURT: Eighty-six. Epstein's
 22 criminal close-out sheet will, again, be
 23 sustained for reasons earlier stated on the
 24 record.
 25 The JEJE passenger manifest --

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.

1 MR. SCAROLA: Sixty-eight isn't dated.
 2 This one is dated. I don't know whether
 3 they're two different letters or the same
 4 one, Your Honor.
 5 MS. ROCKENBACH: Ninety-four. It was
 6 not produced to me.
 7 THE COURT: I'm going to assume that
 8 it's the same unless it's produced
 9 separately. And it will be ordered to be
 10 produced separately within 15 days, if not
 11 already done.
 12 Just like anything else, I'm ordering
 13 it be produced -- that I may have ordered in
 14 the past -- within a 15-day period.
 15 Ninety-six. Alexandra Hall police
 16 report. Same ruling, same position taken by
 17 Mr. Edwards's counsel.
 18 Victim's -- individual -- says
 19 victim's -- not plural -- school records and
 20 transcripts. I don't know which victim
 21 you're talking about. Maybe it's the young
 22 lady who was the model student, as discussed
 23 earlier, allegedly prior to Mr. Epstein's
 24 involvement.
 25 MS. ROCKENBACH: Shana R.

1 THE COURT: She's not one of the people
2 involved here today.

3 MS. ROCKENBACH: That's correct.

4 THE COURT: I will sustain it.

5 MS. ROCKENBACH: Your Honor, if I may.
6 I think I have a sampling of this exhibit.
7 All the pages I have in front of me say
8 Shana R.

9 THE COURT: Ninety-seven would be the
10 same ruling.

11 Ninety-eight, the same ruling.

12 Ninety-nine, the same ruling.

13 One hundred. All surveillance
14 conducted by law enforcement on Epstein's
15 home. Same ruling.

16 One hundred one. Emails received by
17 Palm Beach Records related to Jeffrey
18 Epstein.

19 Who is Palm Beach records?

20 MS. ROCKENBACH: I don't know, and I
21 don't have the exhibit. It was not
22 produced.

23 THE COURT: Again, to be produced. At
24 this time sustained. Same ruling.

25 One hundred and two. All items listed

1 pleadings and attachments in the action
2 under the Crime Victims' Rights Act
3 prosecuted by Edwards on behalf of victims
4 of Epstein's criminal molestations.

5 As I have done earlier, to be
6 consistent, I sustain the objection because
7 of it's breadth, lack of specificity,
8 without prejudice, to specific documents
9 being provided within 15 days to the
10 attorneys for Epstein.

11 MR. SCAROLA: I'm sorry. We are
12 talking about 113?

13 THE COURT: Yes.

14 MR. SCAROLA: They have all of those,
15 Your Honor. Mr. Epstein entered an
16 appearance in the case. He was permitted to
17 intervene, so they have got all of those
18 pleadings. They're also --

19 THE COURT: That's fine. But I could
20 imagine that in -- I think somebody
21 mentioned eight or nine years' litigation --
22 Mr. Goldberger pointed out earlier, not
23 every one of those documents are going to be
24 relevant here. So whatever the plaintiff is
25 seeking to introduce as a result of that

1 on the Palm Beach Police Department property
2 report lists. Same ruling.

3 One hundred and three. All copies of
4 convictions related to Epstein. I have
5 already ruled on that, at least globally
6 that, until further inquiry is done and
7 further information is received regarding
8 the pleas and to whom they apply, I am not
9 in a position to make definitive ruling on
10 that.

11 One hundred and six -- strike that.

12 One hundred and four is Jeffrey
13 Epstein's criminal records. That mirrors
14 some of the things I've indicated. It would
15 be sustained pending further inquiry or
16 review based upon reasons stated already by
17 the Court.

18 One hundred and five. All documents
19 produced by Palm Beach Police Department
20 prior to the deposition of Detective
21 Recarey, R-E-C-A-R-E-Y.

22 Again, same ruling. I'm just going to
23 ignore 106. It's a catch-all I usually
24 don't rule on any way.

25 One hundred and thirteen. All

1 should be culled and should be provided to
2 the other side.

3 MR. SCAROLA: And my response to that
4 is, as I stand here right now, I don't know.
5 I am listing it because it is potentially
6 relevant. There's obviously been a lot of
7 discussion to the Crime Victims' Rights Act
8 case. And if Your Honor wants me to
9 duplicate everything that's been filed in
10 that case --

11 THE COURT: That's not what I'm
12 suggesting, Mr. Scarola. What I'm saying is
13 the problem that I have and how I usually
14 rule on these matters is that when a file is
15 identified as all pleadings and attachments,
16 particularly whereas here, your client is an
17 attorney who is the lead attorney in the
18 prosecution of the CVRA claims, then he
19 should be aware of what would be relevant as
20 it relates to his malicious prosecution
21 claim against Epstein. Not all of those
22 documents will be relevant.

23 I wouldn't expect a defendant in a
24 malicious prosecution claim, Epstein, to
25 have to review the -- attorneys in

1 particular -- having to review all the
 2 documents and guessing which ones may or may
 3 not be introduced or sought to be introduced
 4 or considered to be introduced. So that's
 5 the issue that I'm dealing with.

6 They must be culled and they must be
 7 provided to them -- 15 days maybe a little
 8 short in light of the holiday season, so I'm
 9 going to give you -- 1/13, 30 days.

10 MS. ROCKENBACH: Thank you, Your Honor.

11 MR. SCAROLA: May I simply state that
 12 at this stage in this litigation, not
 13 knowing what Mr. Epstein is going to attempt
 14 to say with regard to the defense, that
 15 every pleading in the Crime Victims' Rights
 16 Act case is potentially relevant? And every
 17 one of those pleadings is available on
 18 PACER. And he is a party to the litigation.
 19 So to comply with the Court's order -- I
 20 don't want to do something that Your Honor
 21 is telling me I ought not to do. But to
 22 comply with the order as you have described
 23 it, I would simply duplicate every pleading
 24 in that case that is on PACER so that I have
 25 the flexibility to introduce whatever I may

1 need to.

2 THE COURT: That's why my suggestion is
 3 it would be -- that the objection would be
 4 sustained as the exhibit is phrased.

5 It would be the same thing if you were
 6 to stand here today -- if we were in
 7 trial -- and say here are the 3,000 docket
 8 entries to the Crime Victims' Rights Act
 9 case, and I want the jury to review all
 10 3,000 docket entries, which comprise 7,000
 11 pages. I would say, No, it is not specific
 12 enough. No, the jury is not going to go
 13 through all of those without exactly knowing
 14 what they are looking for.

15 And so as phrased, the objection is
 16 sustained.

17 I have given you the opportunity to
 18 otherwise remedy the situation. But if
 19 that's the response that I'm getting -- and
 20 I respect that -- then that's the ruling of
 21 the Court.

22 One hundred fourteen --

23 MR. SCAROLA: I'm sorry. Again, I
 24 would, in light of Your Honor's comments --

25 THE COURT: It was actually a ruling.

1 MR. SCAROLA: Yes, sir. In light of
 2 the Court's ruling -- and I don't mean to be
 3 arguing after the ruling, I only want to
 4 understand it. What I would do is I would
 5 take 113, and I would have a separate
 6 listing of every pleading on PACER, and I
 7 would produce every pleading on PACER. And
 8 I don't want to do that if I'm doing
 9 something that Your Honor believes that I
 10 ought not to be doing.

11 THE COURT: The reason why I say that
 12 is, number one, we already have enough paper
 13 that's involved here. Number two, clearly
 14 in my view, whether we're dealing with a set
 15 of medical records, whether we're dealing
 16 with a set of psychiatric records,
 17 admissions to hospitals, admissions to
 18 psychiatric facilities, rehabilitation
 19 facilities -- I have seen thousands of
 20 documents. I've done in camera inspections
 21 of thousands of documents. I have culled
 22 from them -- probably often out of thousands
 23 of documents -- 30, 40, 50, 70 pages of what
 24 I believe to be relevant.

25 There are a number of documents that

1 deal with food that was eaten by a given
 2 individual per day that has no relevancy at
 3 all whatsoever with the treatment.

4 There are other things that I can't
 5 think of right off the top of any head. But
 6 while they have to be documented by the
 7 hospital, they have to be documented by the
 8 rehab facility, they are not necessarily
 9 relevant to the inquiry at issue and can be
 10 culled out.

11 What I'm saying is, with your client
 12 being the lead attorney on that case,
 13 despite Mr. Epstein being an intervener of
 14 some nature in that case, it's still
 15 incumbent upon the party offering the
 16 exhibits to present the most narrow
 17 compilation. And that is what I'm requiring
 18 you to do.

19 I gave you and your client 30 days to
 20 cull those documents that in good faith are
 21 going to be sought and be admitted, not the
 22 entirety, because the likelihood of me
 23 admitting all of the docket entries over an
 24 eight-year period or nine-year period --
 25 whatever it might -- is highly unlikely

1 because of jury confusion, because of time
 2 and consideration of the jury's time when it
 3 comes to that.

4 MR. SCAROLA: And I would never offer
 5 it all.

6 THE COURT: So that's exactly what I'm
 7 trying to say. The 30-day lead time that I
 8 am giving is in consideration of the amount
 9 of documentation that would have to be
 10 reviewed, and that since Mr. Edwards would
 11 likely be in the best position to be able to
 12 cull out those documents that would
 13 reasonably be calculated to be introduced
 14 into evidence.

15 So that's the order of the Court. If
 16 you take me up on it, that's fine. If you
 17 don't, then, again, I am sustaining the
 18 objection as phrased in number 113. So
 19 that's with the caveat that I have described
 20 and offered to you.

21 MR. VITALE: Your Honor, with regard to
 22 101, you had given us 15 days to produce.
 23 Would that also be extended to 30 days,
 24 given the holiday?

25 THE COURT: No, because, again,

1 THE COURT: Perhaps. If it's an issue
 2 of fact, then it will be overruled.

3 Mr. Scarola, you want to get heard?

4 MR. SCAROLA: That's exactly what I was
 5 going to say, Your Honor.

6 If they are contending that there's an
 7 issue of fact as to whether there was a bona
 8 fide termination, then the circumstance
 9 under which the voluntary dismissal was
 10 taken is obviously relevant and material.
 11 What it was that was Jeffrey Epstein
 12 declined to defend against is relevant and
 13 material.

14 THE COURT: It is overruled.
 15 One hundred and fifteen is time records
 16 and hourly billing documentation produced in
 17 discovery.

18 Is that Mr. Edwards' claim of lost time
 19 and that type of thing?

20 MR. SCAROLA: Yes, Your Honor.

21 THE COURT: Well, that may come in as
 22 far as damages to the malicious prosecution
 23 claim.

24 Have you received any of that yet?

25 MS. ROCKENBACH: I have a circle here,

1 everything, other than what I have just come
 2 up with, I think you already should have
 3 produced it. And if it hasn't been, then
 4 that should be 15 days.

5 The Crime Victims' aspect is much
 6 lengthier and comprises seven or eight years
 7 of litigation. The exhibit list was
 8 compiled and sent out on 9 November, which
 9 is about three or four days short --
 10 business days short of a month, so they
 11 already should have been produced, but have
 12 not. So those things that Ms. Rockenbach is
 13 suggesting haven't been that would be 15
 14 days, other than number 113.

15 Number 114. Edwards' Motion for
 16 Summary Judgment. The Court would like to
 17 take judicial notice.

18 MS. ROCKENBACH: I don't know that it's
 19 an exhibit for the jury to consider. This
 20 might go to -- I think -- I'm guessing -- it
 21 was going to go to a legal argument before
 22 Your Honor as to whether there was a bona
 23 fide termination when my client dismissed
 24 the original proceeding that he brought
 25 against Mr. Edwards.

1 meaning that it was not produced in the
 2 context and pursuant to the Court's order.

3 THE COURT: You might want to get with
 4 Mr. Vitale and see if you can --

5 MR. SCAROLA: It was produced prior to
 6 Mr. Epstein's deposition. In response to a
 7 request for production, all of those time
 8 records have been produced.

9 THE COURT: Again, as I said with
 10 regard to 113, the documents have to be
 11 culled to some degree so that it can be
 12 given to the other side as the exhibit
 13 that's being sought to be introduced at
 14 trial.

15 At this time it may still be going on,
 16 so it may not be completed up to the time of
 17 the trial. Just like medical records,
 18 sometimes if there's ongoing treatment, even
 19 though somebody is at maximum medical
 20 improvement but they are still treating,
 21 there could still be a continuing type of
 22 exhibit.

23 MR. SCAROLA: These are time records of
 24 Mr. Edwards' time devoted to the defense of
 25 the maliciously filed claim. Once that

1 claim was dismissed, he was no longer
2 devoting time to the defense of the claim.

3 Those records have all been produced.
4 They have been specifically identified. He
5 has segregated out time spent in defense of
6 the case from anything else, and they have
7 that exhibit.

8 But if they need it to be re-produced
9 to them again, and Your Honor directs that
10 we need to re-produce it again, we will
11 reproduce it again.

12 THE COURT: Again, I'm not directing
13 another reproduction. Perhaps, as I said,
14 Mr. Vitale can handle that issue with
15 Ms. Rockenbach and it can be taken care of
16 without further judicial intervention. I am
17 sure it can.

18 Next is all claims filed by Epstein in
19 the Rothstein bankruptcy proceeding. I
20 would have to see those when the time comes.

21 All submissions by Epstein in
22 connection with the Rothstein deposition.
23 Again, I will see those when the time comes,
24 if necessary. I will defer on those two.

25 All settlement agreements between

1 at a special-set hearing. So I would
2 suggest that we set something in the near
3 future for a half-hour hearing so that we
4 can deal with those issues independently. I
5 think it's worth some time to be taken.

6 Phone journal taken from Epstein's home
7 and produced to the FBI by Rodriguez.
8 That's the houseman. Same ruling as I made
9 earlier with regard to that.

10 Photograph depicting Roberts, Maxwell
11 and Prince Andrew.

12 MS. ROCKENBACH: No relevance to this
13 action. It's prejudicial.

14 THE COURT: Same argument, Mr. Scarola?

15 MR. SCAROLA: Yes, sir. Same argument.

16 THE COURT: Sustained, unless further
17 information develops to bring to the Court
18 otherwise.

19 All flight logs. We talked about those
20 before. Same ruling.

21 Evidence of contributions to the Palm
22 Beach Police Department. Sustained. Same
23 ruling.

24 MR. SCAROLA: Yes, sir. I did speak of
25 that, the source of information regarding

1 Epstein and victims of sexual molestations.
2 Again, I would have to see those when the
3 time comes. I am most interested in the
4 three individuals at issue.

5 MR. SCAROLA: Your Honor, there have
6 been objections that have been raised to the
7 production of those documents on the basis
8 of a contractual confidentiality provision.

9 If the allegation remains that these
10 cases -- the three at issue -- were somehow
11 ginned up, then the value of the claims in
12 general is at least discoverable with regard
13 to making a determination as to whether the
14 claims were ginned up.

15 And again, the degree of financial
16 exposure that Mr. Epstein was facing is
17 reflected by the settlements of all of the
18 claims that he ultimately settled after the
19 filing of this maliciously -- allegedly
20 maliciously prosecuted lawsuit.

21 So we will be asking the Court to
22 compel production of all of those settlement
23 agreements.

24 THE COURT: That's something that
25 probably will need to be dealt with probably

1 his assets.

2 THE COURT: And I think I deferred on
3 that. If I didn't, that's the way I'm going
4 to deal with it.

5 One hundred and thirty-two, New York
6 Post article: Billionaire Jeffrey Epstein:
7 I'm a sex offender, not a predator, February
8 25, 2011.

9 MR. SCAROLA: These are direct quotes
10 from Mr. Epstein. It's the article in which
11 he compares the abuse inflicted upon
12 children as the equivalent of stealing a
13 bagel.

14 THE COURT: Unsworn statement out of
15 court being used to prove the truth of the
16 matter asserted?

17 MR. SCAROLA: No, sir. Being used to
18 prove the fact that the statement was made,
19 being used to prove the state of the
20 speaker's mind, and being used for purposes
21 of the jury's assessment of punitive
22 damages.

23 We don't contend that molesting
24 children is the equivalent of stealing a
25 bagel.

1 If we were introducing this statement
 2 to prove the truth of the matter asserted,
 3 we would be advocating that molesting a
 4 child is the equivalent of stealing a bagel.

5 THE COURT: No. I'm not sure that's
 6 the way that the hearsay rule is
 7 implemented.

8 Ms. Rockenbach, your position?

9 MS. ROCKENBACH: Thank you. We did
 10 raise hearsay. We raised relevance. We
 11 raised probative value substantially
 12 outweighed by the danger or unfair
 13 prejudice, confusion, misleading the jury,
 14 as well as hearsay and authenticity.

15 This is a very good example of an
 16 inflammatory exhibit by Mr. Edwards, and it
 17 seeks to try to prove, I guess, that my
 18 client is a bad person or bad character
 19 evidence under 90.404. This is hearsay and
 20 it should not be admitted. It would be
 21 inflammatory and very prejudicial to my
 22 client.

23 THE COURT: Any request for admissions
 24 sent out in response to that article?

25 MR. SCAROLA: There may have been.

1 There certainly were deposition questions
 2 concerning whether Mr. Epstein made
 3 statements to any third party regarding any
 4 of his molestation claims, and he asserted
 5 the Fifth Amendment with regard to those.
 6 So we would have the benefit of an adverse
 7 inference in that regard.

8 And the statement of a party opponent
 9 is not a hearsay statement. I'm sorry.
 10 There's an exception to the hearsay rule for
 11 the statement of a party opponent. But it
 12 also goes to state of mind. And clearly the
 13 offender's attitude about the offense he
 14 committed is highly relevant in a punitive
 15 damages claim.

16 THE COURT: I recognize the party
 17 opponent issue. Again, its application is
 18 of concern to me in this particular context
 19 where the information comes from a
 20 newspaper.

21 So I would have to take a look at it.
 22 Maybe we can set that at the same time we
 23 are going to set that other issue about the
 24 other victims' information.

25 MR. SCAROLA: I can assure you that, if

1 Mr. Epstein does show up for trial, one of
 2 the very first questions I'm going to ask
 3 him is, Did you make this statement to the
 4 New York newspaper?

5 THE COURT: Like I said, we will take
 6 that up when time comes. We can further
 7 discuss the objections at the same time we
 8 are going to be discussing the -- all
 9 settlement agreements, 119. All right.

10 MS. ROCKENBACH: Thank you, Your Honor.

11 THE COURT: Thanks a lot to our court
 12 reporter for staying and working through
 13 this, as we have, today.

14 MR. SCAROLA: I assume that we are
 15 going to deal with Fifth Amendment issues as
 16 the first issue when we reconvene?

17 THE COURT: Well, I thought we talked
 18 about those already.

19 MR. SCAROLA: No, no. You remember
 20 that I identified every question and answer?

21 THE COURT: You are talking about the
 22 individual questions and answers. Yes, sir.
 23 Absolutely. And we will take those up
 24 first, and then we will go to the motions to
 25 compel and motion for protective order, if

1 we have the time, okay?

2 Remember on Thursday, we're pretty much
 3 going to limit us to the morning. So we are
 4 going to from 10 to 12, 12:30, then that
 5 will be it. Okay. So try and govern your
 6 arguments accordingly, if you would, please.

7 I am going to give you these materials
 8 back.

9 Mr. Scarola, as I said, I'm going to
 10 impose upon you to prepare the orders as I
 11 have already indicated. I'm not sure at
 12 this point, since we do have these actual
 13 questions, that we can really prepare an
 14 order until we get this done on Thursday as
 15 to the Fifth Amendment global rulings that
 16 the Court has already made. And it may
 17 become more focused and be more specific
 18 once I have had an opportunity to go through
 19 all of these. And I appreciate the fact
 20 that you have done that and gotten them to
 21 me.

22 In the meantime what I'm going to do is
 23 I'm going to keep some of this material.

24 MR. LINK: Judge, thank you for your
 25 time today. We appreciate your patience for

1 giving us so much time.

2 THE COURT: Have a good day. See you
3 back Thursday at 10, okay.

4 - - -

5 (The above proceedings were
6 concluded at 4:35 p.m.)

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1 COURT CERTIFICATE

2
3
4 STATE OF FLORIDA)
5 : SS
6 COUNTY OF PALM BEACH)

7 I, SONJA D. HALL, certify that I was
8 authorized to and did stenographically report the
9 foregoing proceedings and that the transcript is a
10 true record of my stenographic notes.

11
12
13 Dated this 7th day of December 2017.

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16 SONJA D. HALL

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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
AMENDED EXHIBIT LIST**

Plaintiff/Counter-Defendant Jeffrey Epstein hereby files this list of the trial exhibits he may introduce at the trial of this matter.

INDEX TO OBJECTIONS

0. No Objection	5. Privileged
1. All objections	6. Opinion
2. All objections, except authenticity	7. Hearsay
3. Irrelevant or immaterial	8. Authenticity lacking
4. Probative value substantially outweighed by danger of unfair prejudice, confusion of issues, misleading the jury, or needless presentation of cumulative evidence	9. Other (please identify basis of objection)

No.	Date	Description	Objection	Marked in Evidence	Marked for Id.
<i>Jeffrey Epstein v. Scott Rothstein, Bradley J. Edwards and L.M. 15th Judicial Circuit Case No. 50-2009-CA-040800XXXXMB</i>					
1	12/7/09	Complaint with Exhibits			
2	12/21/09	Answer and Counterclaim of Defendant Bradley J. Edwards			
3	1/21/10	Default against Scott Rothstein			
4	8/2/10 8/9/10	Stipulation and Order of Dismissal with Prejudice as to L.M., Individually Only			
5	3/27/12	Notice of Appearance of Bradley J. Edwards			
6	8/16/12	Notice of Voluntary Dismissal Without Prejudice of Bradley J. Edwards			
7	1/9/13	Bradley J. Edwards' Fourth Amended Counterclaim			
8	9/25/13	Affidavit of Jeffrey Epstein			
9	6/30/17	Affidavit of Jeffrey Epstein			
10	6/30/17	Jeffrey Epstein's Motion for Summary Judgment, Appendix in Support and all documents cited therein			
11	Misc.	All deposition transcripts, exhibits and videotapes including, but not limited to: <ul style="list-style-type: none"> a. Bradley J. Edwards (3/23/10; 5/15/13; 10/10/13; 11/10/17) b. Jeffrey Epstein (3/17/10; 1/25/12) c. Scott Rothstein (6/14/12) d. Russell Adler (4/20/11) e. Abrakas Joseph Discala (5/25/11) f. Dean Russell Kretschmar (2/11/11) g. Michael Legamaro (3/11/11) h. Courtney Wild (10/12/17) 			
12	Misc.	Defendant/Counter-Plaintiff Bradley J. Edwards' Answers, Responses, Objections and Privilege Logs in response to Plaintiff/Counter-Defendant Jeffrey Epstein's Interrogatories, Requests for Admission, Requests for Production, and Subpoenas Duces Tecum			
13	Misc.	All documents produced by any party or non-party in this matter			
14	Misc.	All documents filed in the court file, including pleadings, motions, responses, affidavits, discovery, and exhibits			
15	Misc.	All hearing transcripts			
<i>State of Florida v. Jeffrey Epstein 15th Judicial Circuit</i>					

No.	Date	Description	Objection	Marked in Evidence	Marked for Id.
16	4/24/07	Transcript of Taped Statement of Tatum Miller			
17	Misc.	All other testimony, transcripts and statements provided in the matter			

L.M. v. Jeffrey Epstein
15th Judicial Circuit Case No. 50-2008-CA-028051XXXXMB

18	Misc.	Court docket and all court filings referenced therein			
19	9/11/08	Complaint			
20	12/23/08	Amended Complaint			
21	3/30/09	Notice of Change of Firm and Address			
22	4/7/09	Defendant Epstein's Answer & Affirmative Defenses to Plaintiff's Amended Complaint			
23	8/19/09 9/11/09	Notices of Production from Non Parties: (1) Stephen Alexander, M.D.; (2) Bruce W. Markowitz, M.D.; and (3) Charles J. Galecki, M.D.			
24	8/24/09	Notices of Taking Deposition and Subpoenas to (1) Lawrence Paul Visoski, Jr. and (2) David Hart Rogers			
25	8/11/09	Plaintiff's Request for Production to Defendant			
26	8/19/09	Defendant Epstein's Answer & Affirmative Defenses to Plaintiff's Second Amended Complaint			
27	5/28/10	Plaintiff's Third Amended Complaint			
28	7/22/10	Stipulation of Dismissal With Prejudice			
29	Misc.	All testimony, deposition transcripts, exhibits and videotapes including, but not limited to: a. L.M. (9/24/09; 2/9/10)			

L.M. v. Jeffrey Epstein
USDC S.D. Fla. Case No. 09-CV-81092

30	Misc.	Court docket, all court filings referenced therein and all discovery and discovery responses			
31	7/24/09	Complaint and Demand for Jury Trial			
32	7/20/10	Stipulation of Dismissal With Prejudice (D.E. 21)			
33	Misc.	All testimony, deposition transcripts, exhibits and videotapes			
34		Federal Rule of Civil Procedure, Rule 11			

E.W. v. Jeffrey Epstein
15th Judicial Circuit Case No. 50-2008-CA-028058XXXXMB

35	Misc.	Court docket, all court filings referenced therein and all discovery and discovery responses			
36	9/10/08	Complaint			

No.	Date	Description	Objection	Marked in Evidence	Marked for Id.
37	12/23/08	Amended Complaint			
38	3/30/09	Notice of Change of Firm and Address			
39	4/6/09	Defendant Epstein's Answer & Affirmative Defenses to Plaintiff's Amended Complaint			
40	6/2/09	Defendant Epstein's Motion for Order to Terminate or Limit Deposition and Response in Opposition to Plaintiff's Amended Motion to Compel for Sanctions			
41	7/16/09	Cross Notice of Taking Videotaped Deposition of Alfredo Rodriguez			
42	8/19/09	Defendant Epstein's Answer & Affirmative Defenses to Plaintiff's Second Amended Complaint			
43	8/10/09	Plaintiff's Request for Entry Upon Land			
44	5/28/10	Plaintiff's Third Amended Complaint			
45	7/22/10	Stipulation of Dismissal With Prejudice			
46	7/29/10	Order Adopting Stipulation and Dismissing Case With Prejudice			
47	Misc.	All testimony, deposition transcripts, exhibits and videotapes including, but not limited to: a. E.W. (5/6/10)			

Jane Doe v. Jeffrey Epstein
USDC S.D. Fla. Case No. 08-CV-80893

48	Misc.	Court docket, all court filings referenced therein and all discovery and discovery responses			
49	8/12/08	Complaint (D.E. 1)			
50	3/26/09	Defendant Epstein's Motion to Stay and/or Continue Action for Time Certain Based on Parallel Civil and Criminal Proceedings with Incorporated Memorandum of Law (D.E. 24)			
51	4/9/09	Notice of Change of Address and Firm Affiliation (D.E. 30)			
52	4/9/09	Plaintiff's Motion to Strike References to Non-Prosecution Agreement or, in the Alternative, to Lift Protective Order Barring Jane Doe's Attorney's from Revealing Provisions in the Agreement (D.E. 32)			
53	4/17/09	Plaintiff's First Amended Complaint (D.E. 38)			
54	5/14/09	Order Consolidating Cases for Purposes of Discovery and Procedural Motions that Relate to Multiple Cases (D.E. 56)			

No.	Date	Description	Objection	Marked in Evidence	Marked for Id.
55	7/28/09 to 10/22/09	Notices of Taking Deposition and Subpoenas to: Ghislane Noelle Maxwell, Leslie Wexler, Donald Trump, Mark Epstein, Nadia Marcinkova, Jean Luc Bruhel, Sarah Kellen, Michael Friedman, Rosalie Friedman, and Michael Sanka			
56	7/20/10	Stipulation of Dismissal With Prejudice (D.E. 210)			
57	7/20/10	Final Order of Dismissal With Prejudice (D.E. 211)			
58	Misc.	All testimony, deposition transcripts, exhibits and videotapes			

Jane Doe 2 v. Jeffrey Epstein (Consolidated Action)
USDC S.D. Fla. Case No. 08-CV-80119

59	Misc.	Court docket, all court filings referenced therein and all discovery and discovery responses			
60	6/19/09	Plaintiff Jane Doe's Motion for Injunction Restraining Fraudulent Transfer of Assets Appointment of a Receiver to Take Charge of Property of Epstein and to Post a \$15 Million Bond to Secure Potential Judgment (D.E. 165)			
61	7/23/09	Plaintiff Jane Doe's Reply Memorandum in Support of Motion for Injunction Restraining Fraudulent Transfer of Assets, Appointment of a Receiver to Take Charge of Property of Epstein and to Post a \$15 Million Bond to Secure Potential Judgment (D.E. 217)			
62	10/16/09	Plaintiff Jane Doe's Notice that Additional Evidence of Epstein's Fraudulent Asset Transfers Will be Filed Shortly, etc. (D.E. 357)			
63	10/30/09	Plaintiff Jane Doe's Motion for Leave to Provide Recently-Obtained Deposition Testimony and Affidavit Demonstrating Fraudulent Transfers by Epstein in Support of Motion for Appointment of a Receiver to Take Charge of Property of Epstein and Incorporated Supporting Memo of Law (D.E. 386)			
64	11/5/09	Order (D.E. 400)			
65	Misc.	All testimony, deposition transcripts, exhibits and videotapes			

Jane Doe v. United States of America (CVRA)
USDC S.D. Fla. Case No. 08-80736-CIV

66	7/7/08	Emergency Victim's Petition for Enforcement of Crime Victim's Rights Act, 18 U.S.C. Section 3771 (D.E. 1)			
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No.	Date	Description	Objection	Marked in Evidence	Marked for Id.
67	8/14/08	Transcript of Hearing Before the Honorable Kenneth A. Marra			
<i>Rothstein Rosenfeldt Adler and Stuart Rosenfeldt v. Scott W. Rothstein</i> 17 th Judicial Circuit Broward County Case No. 2009-CA-059301-AXXXCE					
68	Misc.	Court docket, all court filings referenced therein and all discovery and discovery responses			
69	11/3/09	Amended Complaint			
70	Misc.	All testimony, deposition transcripts, exhibits and videotapes			
<i>In re Rothstein Rosenfeldt Adler, P.A.</i> USBC S.D. Fla. Case No. 09-34791-RBR					
71	11/16/09	Motion of the U.S. Trustee for an Order Directing the Appointment of a Chapter 11 Trustee and Objection to Retention of Chief Restructuring Officer (D.E. 8)			
72	12/1/09	Verified Complaint for Damages and Other Relief (D.E. 74)			
73	2/23/11	Privilege Log of Farmer, Jaffe, Weissing, Edwards, Fistos & Lehrman			
74	Misc.	All testimony, deposition transcripts, exhibits and videotapes including, but not limited to: <ul style="list-style-type: none"> a. Scott W. Rothstein (12/12/11); b. Jack (John) Scarola's (7/2/13); and c. Russell Adler (10/28/10). 			
<i>United States of America v. Scott Rothstein – Forfeiture Action</i> USDC S.D. Fla. Case No. 09-CV-61780-Zloch-Rosenbaum					
75	11/9/09	Verified Complaint for Forfeiture <i>in Rem</i> (D.E. 1)			
76	11/23/09	Amended Verified Complaint for Forfeiture <i>in Rem</i> (D.E. 14)			
77	11/27/09	Amended Verified Complaint for Forfeiture <i>in Rem</i> (D.E. 19)			
<i>The Florida Bar Matters</i>					
78	11/9/09	The Florida Bar Inquiry/Complaint Form Jeffrey Epstein filed against Bradley J. Edwards, William Berger and Scott Rothstein			
79	11/25/09	Approval of Scott Rothstein's disbarment; <i>The Florida Bar v. Scott Walter Rothstein</i> ; Supreme Court Case No. SC09-2146			

No.	Date	Description	Objection	Marked in Evidence	Marked for Id.
80	6/24/10	The Florida Bar's Notice of No Probable Cause and Letter of Advice to Accused; <i>In re Complaints by Jeffrey Epstein and the Florida Bar against Bradley James Edwards</i> ; Case No. 2010-50,746(09B)			

United States of America v. Scott W. Rothstein
USDC S.D. Fla. Case No. 09-60331

81	12/1/09	Information charging Scott W. Rothstein			
82	1/25/10	Plea Agreement between the United States of America and Scott W. Rothstein			
83	9/26/17	Government's Motion to Withdraw its Motion for Reduction of Sentence			

Razorback Funding, LLC, et al. v. Scott W. Rothstein, et al.
17th Judicial Circuit, Broward County, Florida Case No. 09-062943

84	Misc.	Court docket, all court filings referenced therein and all discovery and discovery responses			
85	11/20/09	Complaint			
86	11/25/09	Amended Complaint			
87	Misc.	All testimony, deposition transcripts, exhibits and videotapes including, but not limited to: a. Scott W. Rothstein's testimony (12/12/11, 12/19/11, 12/20/11, 12/21/11, 12/22/11)			

Rothstein Rosenfeldt Adler – Communication

88	4/8/09 2:58 p.m.	E-mail from Russell Adler to Bradley J. Edwards, cc Mark S. Nurik (01404)			
89	4/22/09 4:51 p.m.	E-mail from Bradley J. Edwards to Russell Adler (01620)			
90	4/24/09 5:07 p.m.	E-mail from Bradley J. Edwards to Russell Adler (01446)			
91	5/19/09 10:33 a.m.	E-mail from William J. Berger to Bradley J. Edwards, Russell Adler, Steven R. Jaffe, Matthew D. Weissing and Gary M. Farmer (01726)			
92	5/19/09 12:00 p.m.	E-mail from Susan K. Stirling to Bradley J. Edwards (05725)			
93	5/19/09 12:03 p.m.	E-mail from Bradley J. Edwards to Russel Adler (01574)			
94	5/22/09 12:13 p.m.	E-mail from Bradley J. Edwards to Susan Spencer Wendel (01449)			
95	5/22/09 12:21 p.m.	E-mail from Susan Spencer Wendell to Bradley J. Edwards (05148)			

No.	Date	Description	Objection	Marked in Evidence	Marked for Id.
96	5/26/09 4:57 p.m.	E-mail from Bradley J. Edwards to Timothy Malloy (01450)			
97	5/26/09 5:33 p.m.	E-mail from Timothy Malloy to Bradley J. Edwards (05151)			
98	5/28/09 2:13 p.m.	E-mail from Susan Spencer Wendell to Bradley J. Edwards (05161)			
99	5/28/09 2:16 p.m.	E-mail from Bradley J. Edwards to William J. Berger (02241-02242)			
100	6/3/09 5:17 p.m.	E-mail from William J Berger to Grace Torres, cc Russell Adler and Bradley J. Edwards (01735)			
101	6/4/09 10:43 a.m.	E-mail from Bradley J. Edwards to Susan K. Stirling, cc Carla Martinez (01410)			
102	6/9/09 3:10 p.m.	E-mail from Bradley J. Edwards to Eric Glasser (06655)			
103	6/23/09 12:52 p.m.	E-mail from Bradley J. Edwards to Michele Dargan (Palm Beach Daily News) (01632)			
104	6/23/09 1:03 p.m.	E-mail from Bradley J. Edwards to Paul Cassell (01634)			
105	6/23/09 1:13 p.m.	E-mail from Michele Dargan to Bradley J. Edwards (05239)			
106	6/23/09 1:16 p.m.	E-mail from Bradley J. Edwards to Michele Dargan (05203)			
107	6/23/09 1:29 p.m.	E-mail from Michele Dargan to Bradley J. Edwards (05277-05278)			
108	6/23/09 2:31 p.m.	E-mail from Bradley J. Edwards to Michele Dargan (05207-05208)			
109	6/23/09 2:41 p.m.	E-mail from Michele Dargan to Bradley J. Edwards (05324-05325)			
110	6/23/09 2:53 p.m.	E-mail from Bradley J. Edwards to Michele Dargan (05212-05213)			
111	6/23/09 3:08 p.m.	E-mail from Michele Dargan to Bradley J. Edwards (05344-05346)			
112	6/23/09 3:12 p.m.	E-mail from Bradley J. Edwards to Michele Dargan (05215-05217)			
113	6/23/09 4:39 p.m.	E-mail from Michele Dargan to Bradley J. Edwards (05368-05369)			
114	6/23/09 5:22 p.m.	E-mail from Bradley J. Edwards to Michele Dargan (05220-05221)			
115	6/23/09 5:28 p.m.	E-mail from Michele Dargan to Bradley J. Edwards (05387-05388)			
116	6/24/09 9:39 a.m.	E-mail from Bradley J. Edwards to Michele Dargan (05224-05225)			

No.	Date	Description	Objection	Marked in Evidence	Marked for Id.
117	7/8/09 3:36 p.m.	E-mail from Bradley J. Edwards to Russell Adler, William J. Berger and Steven R. Jaffee (01462)			
118	7/13/09 2:28 p.m.	E-mail from Michele Dargan (Palm Beach Daily News) to Bradley J. Edwards (08404)			
119	7/4/09 4:37 p.m.	E-mail from Bradley J. Edwards to William J. Berger (02204)			
120	7/15/09 1:17 p.m.	E-mail from Bradley J. Edwards to Michele Dargan (04906)			
121	7/15/09 1:22 p.m.	E-mail from Michele Dargan to Bradley J. Edwards (04905)			
122	7/18/09 4:10 p.m.	E-mail from Bradley J. Edwards to Russell Adler (01661)			
123	7/21/09 8:21 p.m.	E-mail from Bradley J. Edwards to Michele Leone (01352)			
124	7/22/09 11:22 a.m.	E-mail from Bradley J. Edwards to Michele Dargan (01479)			
125	7/22/09 11:35 a.m.	E-mail from Michele Dargan to Bradley J. Edwards (05803)			
126	7/22/09 1:29 p.m.	E-mail from Jacquie Johnson to Bradley J. Edwards (01662)			
127	7/22/09	Letter from Bradley J. Edwards re cross noticing depositions			
128	7/26/09 5:28 p.m.	E-mail from Priscila A. Nascimento to Scott Rothstein, cc Amy N. Howard and Adelita Cabello (25860-25863)			
129	7/28/09 8:59 a.m.	E-mail from Bradley J. Edwards to Susan Spencer Wendel (01483)			
130	7/28/09 8:59 a.m.	E-mail from Susan Spencer Wendel to Bradley J. Edwards (03070)			
131	7/28/09 9:28 a.m.	E-mail from Bradley J. Edwards to Michele Dargan (01486)			
132	7/28/09 10:00 a.m.	E-mail from Michele Dargan to Bradley J. Edwards (05848)			
133	7/29/09 1:13 p.m.	E-mail from Cara L. Holmes to Bradley J. Edwards (08420)			
134	7/28/09 1:47 p.m.	E-mail from Michele Dargan to Bradley J. Edwards (11075-11076)			
135	7/29/09 1:49 p.m.	E-mail from Michele Dargan to Bradley J. Edwards (05852-05853)			
136	7/30/09 2:36 p.m.	E-mail from Bradley J. Edwards to Michele Dargan (05535-05536)			
137	7/30/09 2:36 p.m.	E-mail from Bradley J. Edwards to Michele Dargan (11320-11322)			

No.	Date	Description	Objection	Marked in Evidence	Marked for Id.
138	7/30/09 6:06 p.m.	E-mail from Bradley J. Edwards to Michele Dargan (05538-05539)			
139	7/31/09 11:20 a.m.	E-mail from Michele Dargan to Bradley J. Edwards (11080-11082)			
140	8/10/09 6:59 p.m.	E-mail from Bradley J. Edwards to Michael Isikoff (06965)			
141	8/10/09 7:23 p.m.	E-mail from Michael Isikoff to Bradley J. Edwards (06967)			
142	8/11/09 8:43 a.m.	E-mail from Bradley J. Edwards to Michael Isikoff (06968-06969)			
143	8/11/09 9:29 a.m.	E-mail from Michael Isikoff to Bradley J. Edwards (06963-06964)			
144	8/11/09 10:10 a.m.	E-mail from Bradley J. Edwards to Michael Isikoff (06970-06971)			
145	8/11/09 12:34 p.m.	E-mail from Michael Isikoff to Bradley J. Edwards (06959-06960)			
146	8/14/09 4:40 p.m.	E-mail from Michael Isikoff to Bradley J. Edwards (06975)			
147	8/15/09 2:41 p.m.	E-mail from Bradley J. Edwards to Mike Fisten, cc Ken Jenne (01685)			
148	8/15/09 6:00 p.m.	E-mail from Bradley J. Edwards to Michael Isikoff (06972-06973)			
149	8/17/09 10:32 a.m.	E-mail from Michael Isikoff to Bradley J. Edwards (06976-06977)			
150	8/17/09 10:42 a.m.	E-mail from Bradley J. Edwards to Jacquie Johnson (02442)			
151	8/19/09 2:47 p.m.	E-mail from Bradley J. Edwards to Ken Jenne (01501)			
152	8/24/09 7:38 p.m.	E-mail from Bradley J. Edwards to Conchita Sarnoff (01506)			
153	8/25/09 11:03 a.m.	E-mail from Conchita Sarnoff to Bradley J. Edwards (05952-05953)			
154	8/26/09 9:56 p.m.	E-mail from Bradley J. Edwards to Conchita Sarnoff (02269)			
155	8/31/09 10:58 a.m.	E-mail from Conchita Sarnoff to Bradley J. Edwards (02895)			
156	9/2/09 12:54 p.m.	E-mail from Elizabeth Villar to Bradley J. Edwards and Ken Jenne, cc Jacquie Johnson, Pat Roberts and Mike Fisten (01376)			
157	9/7/09 1:39 p.m.	E-mail from Conchita Sarnoff to Bradley J. Edwards (07612-07613)			
158	9/7/09 6:42 p.m.	E-mail from Conchita Sarnoff to Bradley J. Edwards (02595-02596)			

No.	Date	Description	Objection	Marked in Evidence	Marked for Id.
159	9/7/09 6:49 p.m.	E-mail from Bradley J. Edwards to Conchita Sarnoff (07614-07615)			
160	9/7/09 7:00 p.m.	E-mail from Conchita Sarnoff to Bradley J. Edwards (07605-07606)			
161	9/7/09 8:12 p.m.	E-mail from Bradley J. Edwards to Conchita Sarnoff (07607-07608)			
162	9/7/09 10:55 p.m.	E-mail from Conchita Sarnoff to Bradley J. Edwards (07609-07611)			
163	9/8/09 11:43 a.m.	E-mail from Bradley J. Edwards to Conchita Sarnoff (04015)			
164	9/8/09 11:50 a.m.	E-mail from Conchita Sarnoff to Bradley J. Edwards (07646)			
165	9/8/09 11:53 a.m.	E-mail from Bradley J. Edwards to Conchita Sarnoff (07647)			
166	9/8/09 12:04 p.m.	E-mail from Conchita Sarnoff to Bradley J. Edwards (07676-07677)			
167	9/8/09 1:59 p.m.	E-mail from Conchita Sarnoff to Bradley J. Edwards (07674-07675)			
168	9/8/09 2:04 p.m.	E-mail from Bradley J. Edwards to Conchita Sarnoff (07678-07679)			
169	9/8/09 2:36 p.m.	E-mail from Conchita Sarnoff to Bradley J. Edwards (07684-07685)			
170	9/8/09 2:42 p.m.	E-mail from Bradley J. Edwards to Conchita Sarnoff (07682-07683)			
171	9/8/09 2:49 p.m.	E-mail from Conchita Sarnoff to Bradley J. Edwards (07695-07697)			
172	9/8/09 3:25 p.m.	E-mail from Conchita Sarnoff to Bradley J. Edwards (07680-07681)			
173	9/8/09 7:51 p.m.	E-mail from Bradley J. Edwards to Conchita Sarnoff (07686-07688)			
174	9/8/09 7:53 p.m.	E-mail from Conchita Sarnoff to Bradley J. Edwards (07689-07691)			
175	9/8/09 7:53 p.m.	E-mail from Conchita Sarnoff to Bradley J. Edwards (07692-07694)			
176	9/15/09 1:08 p.m.	E-mail from Bradley J. Edwards to Elizabeth Villar, cc Ken Jenne and Pat Roberts (01361)			
177	9/18/09 12:35 p.m.	E-mail from Bradley J. Edwards to Russell Adler (01318)			
178	9/18/09 12:35 p.m.	E-mail from Jacquie Johnson to Ann Marie Villafana, cc Bradley J. Edwards (01583)			
179	9/18/09 1:01 p.m.	E-mail from Bradley J. Edwards to Susan Spencer Wendel (05619-05620)			

No.	Date	Description	Objection	Marked in Evidence	Marked for Id.
180	9/18/09 2:37 p.m.	E-mail from Bradley J. Edwards to Beth S. Williamson (01144)			
181	9/18/09 2:55 p.m.	E-mail from Bradley J. Edwards to Michele Dargan (01280-01288)			
182	9/21/09 1:37 p.m.	E-mail from Conchita Sarnoff to Bradley J. Edwards (03081)			
183	9/23/09 8:42 p.m.	E-mail from Conchita Sarnoff to Bradley J. Edwards (04320)			
184	9/24/09 6:31 a.m.	E-mail from Bradley J. Edwards to Conchita Sarnoff (04321)			
185	9/24/09 6:53 a.m.	E-mail from Conchita Sarnoff to Bradley J. Edwards (04318-04319)			
186	9/24/09 8:45 p.m.	E-mail from Conchita Sarnoff to Bradley J. Edwards (10586-10589)			
187	9/28/09 8:09 a.m.	E-mail from Conchita Sarnoff to Bradley J. Edwards, cc Renee/Carlos Morrison (02913)			
188	9/28/09 10:06 a.m.	E-mail from Bradley J. Edwards to Conchita Sarnoff (06789)			
189	9/28/09 10:20 a.m.	E-mail from Conchita Sarnoff to Bradley J. Edwards (06788)			
190	9/28/09 11:45 p.m.	E-mail from Mike Fisten to Conchita Sarnoff (19986-19987)			
191	9/29/09 10:06 a.m.	E-mail from Bradley J. Edwards to Ken Jenn and Elizabeth Villar (01754)			
192	10/2/09 10:41 a.m.	E-mail from Bradley J. Edwards to Nigel Rosser (06191)			
193	10/2/09 11:08 a.m.	E-mail from Nigel Rosser to Bradley J. Edwards (06189-06190)			
194	10/2/09 4:28 p.m.	E-mail from Michael Isikoff to Bradley J. Edwards (06979-06980)			
195	10/2/09 4:52 p.m.	E-mail from Bradley J. Edwards to Mike Fisten (02440-02441)			
196	10/2/09 4:53 p.m.	E-mail from Bradley J. Edwards to Michael Isikoff, cc Jacquie Johnson (06974)			
197	10/2/09 6:14 p.m.	E-mail from Michael Isikoff to Bradley J. Edwards, cc Jacquie Johnson (06955-06956)			
198	10/8/09 4:11 p.m.	E-mail from Bradley J. Edwards to Richard Johnson (06961)			
199	10/13/09 2:17 p.m.	E-mail from Grant J. Smith to Scott Rothstein, Bradley J. Edwards, Ken Jenne, Kip Hunter and Russell Adler, cc Grant J. Smith (26507)			
200	10/13/09 2:27 p.m.	E-mail from Mike Fisten to Bradley J. Edwards (01727)			

No.	Date	Description	Objection	Marked in Evidence	Marked for Id.
201	10/13/09 7:00 p.m.	E-mail from Bradley J. Edwards to Jacquie Johnson, cc Mike Fisten (01744)			
202	10/14/09 7:39 a.m.	E-mail from Bradley J. Edwards to Conchita Sarnoff (03190)			
203	10/14/09 9:02 a.m.	E-mail from Conchita Sarnoff to Bradley J. Edwards (03189)			
204	10/14/09 10:42 a.m.	E-mail from Russell Adler to Bradley J. Edwards, cc Jacquie Johnson (01099)			
205	10/14/09 12:20 p.m.	E-mail from Bradley J. Edwards to Mike Fisten, cc Jacquie Johnson (01741)			
206	10/16/09 5:29 a.m.	E-mail from ABA Journal Weekly Newsletter to Scott Rothstein (25864-25865)			
207	10/19/09 10:46 a.m.	E-mail from Bradley J. Edwards to Ken Jenne (01704)			
208	10/20/09 1:01 p.m.	E-mail from George Rush to Bradley J. Edwards (01433)			
209	10/20/09 3:07 p.m.	E-mail from Ken Jenne to Scott Rothstein (26506)			
210	10/22/09 11:52 a.m.	E-mail from Bradley J. Edwards to Jacquie Johnson (01391)			
211	10/22/09 2:52 p.m.	E-mail from Jacquie Johnson to Russell Adler, Cara L. Holmes, Mike Fisten, Michael J. Wheeler, Marc S. Nurik, William J. Berger, Bradley J. Edwards, Barry J. Stone and Ken Jenne, cc Robert C. Buschel (01392)			
212	10/22/09 4:10 p.m.	E-mail from Jacquie Johnson to Bradley J. Edwards, Marc S. Nurik, Michael J. Wheeler, Cara L. Holmes, William J. Berger, Russell Adler and Robert C. Buschel (01307)			
213	10/26/09 7:46 a.m.	E-mail from William J. Berger to Pat Carter and Bradley J. Edwards, cc Grace Torres and Jacquie Johnson (01380)			
214	10/29/09 2:16 p.m.	E-mail from Pat Diaz to Bradley J. Edwards (01623)			
215	10/30/09 10:01 a.m.	E-mail from Debra Villegas to Scott Rothstein (26304-26305)			
216	10/30/09 10:03 a.m.	E-mail from Russell Adler to Jacquie Johnson and Bradley J. Edwards (01625)			
Billing					
217	12/21/09	Contract for Services between Searcy Denny Scarola Barnhart & Shipley and Bradley J. Edwards			

No.	Date	Description	Objection	Marked in Evidence	Marked for Id.
218	N/D	Spreadsheet of Brad Edwards' Time in <i>Edwards adv. Epstein</i> (BJE00000104 – BJE00000156)			
219	7/14/10 - 1/16/13	Searcy Denney Scarola Barnhart and Shipley's Invoices for Disbursements to Bradley J. Edwards (BJE000000039 – BJE000000103)			
220	1/1/80 – 2/15/13	Search Denney Scarola Barnhart and Shipley's Matter Ledger Report (BJE000000006 – BJE000000038)			
Miscellaneous					
221	10/23/09	Rothstein Rosenfeldt Adler's Firm Directory			
222	11/9/17	Farmer, Jaffe, Weissing, Edwards, Fistos & Lehrman, P.L.'s "Our Attorneys" website printout (https://www.pathtojustice.com/about-us/attorneys/)			
223	12/1/09	Criminal Complaint; <i>United States of America v. Alfredo Rodriguez</i> ; USDC S.D. Fla. Case No. 09-8308			
224	4/23/10	Affidavit of Bradley James Edwards			
225	9/21/10	Affidavit of Bradley James Edwards			
226	Misc.	Subpoenas and Notices of Deposition for Alan Dershowitz, David Copperfield and Leonard Baird			
227	11/16/17	Critton Luttier Coleman, LLP's website printout for Robert D. Critton Jr. (https://www.lawclc.com/team_members/Robert-d-critton-jr/)			
228	11/16/17	Fowler White Burnett, P.A.'s website printout for Joseph L. Ackerman, Jr. (http://www.fowler-white.com/Attorneys/id/3/read)			
Bradley J. Edwards					
229	N/D	The National Crime Victim Bar Association presentation excerpt of article by Bradley J. Edwards: <i>Who is Responsible for Child Sexual Abuse</i>			
230	N/D	The Florida Bar's website member profile printout for Bradley James Edwards			
231	N/D	National Association of Distinguished Counsel biographical information for Bradley J. Edwards			
232	5/14/13	The National Trial Lawyers Top 40 Under 40 Directory (http://www.thenationaltriallawyers.org/top-40-under-40-directory/?last_name=Edwards&city=&state=FL&x=18&y=17)			

No.	Date	Description	Objection	Marked in Evidence	Marked for Id.
233	5/14/13	The National Trial Lawyers Profile View of Brad Edwards (http://www.thenationaltriallawyers.org/profile-view/Brad/Edwards/4409/)			
234	5/14/13	Lawyers.com website information for Bradley J. Edwards (http://www.lawyers.com/florida/fort-lauderdale/Bradley-J-Edwards-3489098-a/)			
235	10/30/04	Kubicki Draper's website attorney information for Brad J. Edwards			
236	10/30/05	Kubicki Draper's website attorney information for Brad J. Edwards			
237		The American Registry Website printouts of recognitions received by Bradley J. Edwards			
238	5/7/12	Farmer, Jaffe, Weissing, Edwards, Fistos & Lehrman, P.L.'s website printout (http://www.abuseandassault.com/Abuse_Under_Investigation)			
239	1/16/13	Farmer, Jaffe, Weissing, Edwards, Fistos & Lehrman, P.L.'s website printout (http://www.abuseandassault.com/Abuse_Under_Investigation)			
240	1/16/13	Farmer, Jaffe, Weissing, Edwards, Fistos & Lehrman, P.L.'s website printout (http://www.pathtojustice.com/media-center/press-releases/)			
241	5/14/13	Farmer, Jaffe, Weissing, Edwards, Fistos & Lehrman, P.L. website printout (http://www.abuseandassault.com/Abuse_Home)			
242	5/14/13	Farmer, Jaffe, Weissing, Edwards, Fistos & Lehrman, P.L.'s website printout (http://www.abuseandassault.com/Abuse_Under_Noteable_Cases)			
243	5/14/13	Farmer, Jaffe, Weissing, Edwards, Fistos & Lehrman, P.L.'s website attorney information for Brad Edwards (www.pathtojustice.com/attorneys/brad-edwards/#.UZJOPpWTOX0)			
244	5/14/13	Farmer, Jaffe, Weissing, Edwards, Fistos & Lehrman, P.L.'s website printout (http://www.pathtojustice.com/media-center/archived-press-releases/#.UZJTy5WTOX0)			
245		Farmer, Jaffe, Weissing, Edwards, Fistos & Lehrman, P.L.'s website attorney information for Brad Edwards with referenced articles			

No.	Date	Description	Objection	Marked in Evidence	Marked for Id.
A.	Winter 2014	Journal of Criminal Law and Criminology. Volume 104; Issue 1. <i>Crime Victims' Rights During Criminal Investigations? Applying the Crime Victims' Rights Act Before Criminal Charges are Filed;</i>			
B.	12/26/15	<u>Politico</u> . <i>Victims in Underage Sex Case Want Prosecutors to Testify</i>			
C.	12/21/15	<u>Palm Beach Daily News</u> . <i>Jeffrey Epstein Sex Scandal: Alan Dershowitz Suffers Setback in Defamation Case</i>			
D.	12/18/15	<u>Palm Beach Daily News</u> . <i>Epstein Victims' Attorneys Seek Partial Victory in Defamation Suit</i>			
E.	12/21/15	<u>Palm Beach Post</u> . <i>Boca-Resident Model Nabs \$13.4 Million Following Six-Year Divorce Battle</i>			
F.	12/17/15	<u>Daily Mail.Com</u> . <i>Florida Model Gets Whopping \$13.4 Million Payout from Real Estate Tycoon Ex-Husband After Nasty Six-Year Divorce Battle</i>			
G.	11/25/15	<u>Palm Beach Daily News</u> . <i>Appellate Court Reverses Palm Beach Sex Offender Jeffrey Epstein's Victory</i>			
H.	11/12/15	<u>Daily Business Review</u> . <i>Attorney's Suit Against Billionaire Allowed as Long as Justices Say It's OK</i>			
I.	7/8/15	<u>Palm Beach Daily News</u> . <i>Judge Keeps Thousands of Epstein Documents Sealed</i>			
J.	6/25/15	<u>WCVB5</u> . <i>Jury Awards \$24 Million to Mass. Widower in Fatal Cabana Crash</i>			
K.	6/24/15	<u>NBC6</u> . <i>Jury Awards 24 Million in Fatal Cabana Crash</i>			
L.	6/24/15	<u>CBS Miami</u> . <i>Jury Awards Millions to Husband of Pregnant Woman Killed by Drunk Driver</i>			
M.	6/25/15	<u>Sun Sentinel</u> . <i>Jury Awards \$24 Million to Widower in Fatal Cabana Crash</i>			
N.	1/8/15	<u>Daily Business Review</u> . <i>The Lawyer Suing Legal Legend Alan Dershowitz Over Sex Offender</i>			
O.	4/21/14	<u>The Washington Post</u> . <i>Eleventh Circuit Rules that Discovery Can Move Forward on My Crime Victims' Rights Act Case</i>			
P.	4/21/14	<u>Palm Beach Daily News</u> . <i>Appeals Court Rules Against Sex Offender. Attorneys for Underage Victims Seek to Overturn "Sweetheart Plea"</i>			
Q.	4/21/14	<u>Sun-Sentinel</u> . <i>Victims Win Right to See Negotiation that Led to 'Lenient' Plea Deal Agreement for Billionaire Sex Offender</i>			

No.	Date	Description	Objection	Marked in Evidence	Marked for Id.
R.	4/21/14	<u>Palm Beach Post. Appellate Ruling Could Force Feds to Reconsider Sex Changes Against Palm Beacher Epstein</u>			
S.	10/20/13	<u>Palm Beach Daily News. Newest Lawsuit Against Epstein Expected to Include Victim Testimony</u>			
T.	9/10/12	<u>CBS Miami, Exclusive: Sexual Assault Victim Alleges Abuse by Former Youth Pastor</u>			
U.	9/7/12	<u>Sun-Sentinel. Elevator Fall Nets Woman \$13 Million Jury Award</u>			
V.	July 2012	<u>Daily Business Review. Top Florida Verdicts & Settlements of 2011</u>			
W.	6/13/12	<u>Daily Business Review. Suit Accuses Goldrush Strip Club of Scheme to Bilk Professionals</u>			
X.	4/22/11	<u>Palm Beach Daily Business Review. Jeffrey Epstein Amends Lawsuit; Claims Victims' Attorney Threatened to Depose His Friends</u>			
246	8/10/16	Farmer Jaffe Weissing's Facebook page with referenced articles			
A.	5/22/16	<u>Lawnewz.com. The Shameful Way Feds Protected Convicted Pedophile Billionaire Jeffrey Epstein</u>			
B.	5/13/16	<u>Fox News. Flight Logs Show Bill Clinton Flew on Sex Offender's Jet Much More than Previously Known</u>			
C.	2/11/16	<u>Sun-Sentinel. Feds Deceived Us About Billionaire Sex Offender's 'Sweetheart Deal' Teen Victims Say</u>			
D.	2/12/16	<u>NBC News. Lawyers: Victims Not Told of 'Sweetheart Deal' for Jeffrey Epstein</u>			
E.	2/11/16	<u>NY Daily News. Jeffrey Epstein Accusers Sue Feds Over Hidden Non-Prosecution 'Conspiracy'</u>			
F.	4/23/14	<u>Farmer, Jaffe. Appeals Court Rules in Favor of Crime Victims' Rights in Registered Pedophile Jeffrey E. Epstein Case</u>			
G.	4/23/14	<u>Daily Business Review. Prosecutors Must Turn Over Docs in Billionaire Sex Offender Jeffrey Epstein Case</u>			
247	Misc.	Court and arrest information; Bradley James Edwards; Duval County Court, Case No. 16-1995-MM-000074-AXXA-MA			
248	Misc.	Court and arrest information; Bradley James Edwards; Duval County Case No. 16-1998-CF-004394-AXXX-MA			

No.	Date	Description	Objection	Marked in Evidence	Marked for Id.
249	8/14/07	Exemption and/or Limitation Exclusion – Tax Assessment of \$3,507.72			
250	1/7/08	Notice of Satisfaction of Lien Relative to Tax Exemption			
251	Misc.	Docket and all court filings referenced therein; <i>U.S. Bank National Association v. Bradley J. Edwards</i> ; 17 th Judicial Circuit, Broward County Case No. 2010CA002613AXXXCE			
252	1/21/10	Petition/Complaint; <i>U.S. Bank National Association v. Bradley J. Edwards</i> ; 17 th Judicial Circuit, Broward County Case No. 2010CA002613AXXXCE			
253	2/18/10	Bradley J. Edwards' Answer and Affirmative Defenses; <i>U.S. Bank National Association v. Bradley J. Edwards</i> ; 17 th Judicial Circuit, Broward County Case No. 2010CA002613AXXXCE			
254	8/11/10	Notice of Sale; <i>U.S. Bank National Association v. Bradley J. Edwards</i> ; 17 th Judicial Circuit, Broward County Case No. 2010CA002613AXXXCE			
255	8/11/10	Final Summary Judgment of Mortgage Foreclosure; <i>U.S. Bank National Association v. Bradley J. Edwards</i> ; 17 th Judicial Circuit, Broward County Case No. 2010CA002613AXXXCE			
256	10/22/10	Certificate of Sale; <i>U.S. Bank National Association v. Bradley J. Edwards</i> ; 17 th Judicial Circuit, Broward County Case No. 2010CA002613AXXXCE			
257	11/2/10	Certificate of Title; <i>U.S. Bank National Association v. Bradley J. Edwards</i> ; 17 th Judicial Circuit, Broward County Case No. 2010CA002613AXXXCE			
258	Misc.	Docket and all court filings referenced therein; <i>Wells Fargo Bank, N.A. v. Bradley J. Edwards</i> ; 17 th Judicial Circuit, Broward County Case No. 2010CA012467AXXXCE			
259	3/17/10	Petition/Complaint; <i>Wells Fargo Bank, N.A. v. Bradley J. Edwards</i> ; 17 th Judicial Circuit, Broward County Case No. 2010CA012467AXXXCE			
260	10/4/11	Final Summary Judgment of Mortgage Foreclosure; <i>Wells Fargo Bank, N.A. v. Bradley J. Edwards</i> ; 17 th Judicial Circuit, Broward County Case No. 2010CA012467AXXXCE			
261	10/10/11	Notice of Sale; <i>Wells Fargo Bank, N.A. v. Bradley J. Edwards</i> ; 17 th Judicial Circuit, Broward County Case No. 2010CA012467AXXXCE			

No.	Date	Description	Objection	Marked in Evidence	Marked for Id.
262	1/5/12	Certificate of Sale; <i>Wells Fargo Bank, N.A. v. Bradley J. Edwards</i> ; 17 th Judicial Circuit, Broward County Case No. 2010CA012467AXXXCE			
263	1/18/12	Certificate of Title; <i>Wells Fargo Bank, N.A. v. Bradley J. Edwards</i> ; 17 th Judicial Circuit, Broward County Case No. 2010CA012467AXXXCE			
264	Misc.	Docket and all court filings referenced therein; <i>1st United Bank v. Bradley J. Edwards</i> ; 17 th Judicial Circuit, Broward County Case No. 11-030427			
265	12/8/11	Complaint; <i>1st United Bank v. Bradley J. Edwards</i> ; 17 th Judicial Circuit, Broward County Case No. 11-030427			
266	1/25/12	Stipulation for Settlement; <i>1st United Bank v. Bradley J. Edwards</i> ; 17 th Judicial Circuit, Broward County Case No. 11-030427			
267	Misc.	Docket and all court filings referenced therein; <i>Wells Fargo Bank, N.A. v. Bradley Edwards</i> ; 17 th Judicial Circuit, Broward County Case No. 2012CC003827AXXXWE			
268	3/22/12	Complaint; <i>Wells Fargo Bank, N.A. v. Bradley Edwards</i> ; 17 th Judicial Circuit, Broward County Case No. 2012CC003827AXXXWE			
269	5/18/12	Bradley J. Edwards' Motion to Dismiss; <i>Wells Fargo Bank, N.A. v. Bradley Edwards</i> ; 17 th Judicial Circuit, Broward County Case No. 2012CC003827AXXXWE			
270	10/3/12	Order Denying Motion to Dismiss; <i>Wells Fargo Bank, N.A. v. Bradley Edwards</i> ; 17 th Judicial Circuit, Broward County Case No. 2012CC003827AXXXWE			
271	10/26/12	Answer to Complaint; <i>Wells Fargo Bank, N.A. v. Bradley Edwards</i> ; 17 th Judicial Circuit, Broward County Case No. 2012CC003827AXXXWE			
272	11/20/12	Mediation Report; <i>Wells Fargo Bank, N.A. v. Bradley Edwards</i> ; 17 th Judicial Circuit, Broward County Case No. 2012CC003827AXXXWE			
273	3/15/13	Mediation Report; <i>Wells Fargo Bank, N.A. v. Bradley Edwards</i> ; 17 th Judicial Circuit, Broward County Case No. 2012CC003827AXXXWE			
274		Corporate Detail Printout from Sunbiz.org for The Law Office of Brad Edwards & Associates, LLC			

No.	Date	Description	Objection	Marked in Evidence	Marked for Id.
275	4/16/07	Articles of Organization for Florida Limited Liability Company for The Law Office of Brad Edwards & Associates, LLC			
276	1/25/08	2008 Limited Liability Company Annual Report for The Law Office of Brad Edwards and Associates			
277	3/11/09	2009 Limited Liability Company Annual Report for The Law Office of Brad Edwards and Associates			
278		Florida Bar Rules including, but not limited to, Florida Bar Rule 4-7.21			
279	3/3/08	Complaint; <i>Donald D. Baker v. The City of Hollywood, et al.</i> ; Case No. 08-60294-CIV-HUCK (D.E. 1)			
280	6/17/08	Omnibus Order on Defendants' Motion to Dismiss; <i>Donald D. Baker v. The City of Hollywood, et al.</i> ; Case No. 08-60294-CIV-HUCK (D.E. 79)			
281	8/10/10	U.S. Court of Appeals Opinion; <i>Donald D. Baker v. City of Hollywood, et al.</i> ; Case No. 08-14924 & 08-15602			
282	12/9/04	<u>New Times Broward Palm-Beach: Tale of the Tape</u>			

Experts

283	10/20/17	Dr. Bernard J. Jansen's Expert Report with attachments			
284	Misc.	All documents produced, or relied upon or referenced by Dr. Bernard J. Jansen in preparing his 10/20/17 Report			
285	9/9/16	Expert Witness Report of Dr. Bernard J. Jansen in <i>Virginia Giuffre v. Ghislaine Maxwell</i> (USDC NY)			
286	11/30/16	Supplemental Expert Witness Report of Dr. Bernard J. Jansen in <i>Virginia Giuffre v. Ghislaine Maxwell</i> (USDC NY)			
287	Misc.	All public records, news articles and prior testimony of Dr. Bernard J. Jansen			

Other Articles

288	11/1/09	<i>Kendall Coffey: Law Firm Victimized by Scott Rothstein</i>			
289	11/2/09	<i>Legal Junkies. WSJ Law Blog – Rothstein Rosenfeldt Adler, Ft. Lauderdale, Law Firm Dissolution, Ponzi Scheme</i>			
290	11/2/09	<i>New Times Broward-Palm Beach. Chief Judge: Scott Rothstein's Firm Has "No Money" and is Going into Receivership</i>			

No.	Date	Description	Objection	Marked in Evidence	Marked for Id.
291	11/3/09	<u>The New York Times: Fraud Accusations Against Florida Lawyer Set Off a Race to Return His Donations</u>			
292	11/3/09	<u>Rothstein Returns After Contemplating Suicide, Partner Says</u>			
293	11/3/09	<u>Florida Law Firm Asks to be Dissolved</u>			
294	11/3/09	<u>Sun Sentinel. Scott Rothstein's Investment Deals Seemed Too Good to be True</u>			
295	11/5/09	<u>Funds News. FBI Agents Search Law Firm in Missing Funds Probe</u>			
296	11/6/09	<u>New Times Broward-Palm Beach. Scott Rothstein: The Jeffrey Epstein and Bill Clinton Ploy</u>			
297	11/6/09	<u>Rothstein Accomplice Still on Lam</u>			
298	11/7/09	<u>Tour of Scott Rothstein's Office Reveals Gallery of Who's Who</u>			
299	11/12/09	<u>Sun Sentinel: FBI Doubts Rothstein Ran a Ponzi Scheme Alone</u>			
300	11/13/09	<u>Palm Beach Post: FBI Doubts Rothstein's Scheme a 'One-Man Show'</u>			
301	11/13/09	<u>Sun Sentinel. High-Ranking Police Officers Guarded Over Rothstein</u>			
302	11/17/09	<u>Inside the Rothstein Swindle, Part I</u>			
303	11/17/09	<u>Sun Sentinel. Rothstein Asks to Voluntarily Give Up Law License</u>			
304	11/17/09	<u>Rothstein and Dreier: How Much Alike?</u>			
305	11/18/09	<u>Inside the Rothstein Swindle, Part II</u>			
306	11/18/09	<u>Former RAA Attorneys Take New Jobs</u>			
307	11/20/09	<u>Scherer Files Suit Against Rothstein, et al.</u>			
308	11/20/09	<u>Article by Paul Brinkman</u>			
309	11/21/09	<u>Rothstein Feeder George Levin's Ugly Past</u>			
310	11/22/09	<u>George Levin was Rothstein's Whale</u>			
311	11/23/09	<u>Rothstein Associate Levy Got Protection from Plantation Cops</u>			
312	11/23/09	<u>Main Line Firm's Clients Invested \$30 Million with 'Ponzi' Lawyer</u>			
313	11/23/09	<u>Sun-Sentinel. Scott Rothstein: "You're in Town Full of Thieves</u>			
314	11/24/09	<u>Miami Herald. Feds: Scott Rothstein Ponzi Scheme Paid Salaries at Law Firm</u>			
315	11/26/09	<u>The Rothstein Wires</u>			
316	1/13/10	<u>Sun Sentinel. Florida Bar Looking at 35 Former Attorneys from Rothstein's Firm</u>			

No.	Date	Description	Objection	Marked in Evidence	Marked for Id.
317	July 2010	<u>Sun Sentinel. 22 Former Scott Rothstein Attorneys Cleared by the Florida Bar</u>			
318	10/22/10	<u>South Florida Business Journal. A Year After Rothstein, Many Questions Unanswered</u>			
319	10/31/10	<u>The Florida Bar. Scott Rothstein Scandal: One Year Later</u>			
320	1/21/13	<u>Forbes. Rothstein Expose Details Sex, Murder, and Corruption Behind Florida's Largest Ponzi Scheme</u>			
321	10/13/14	<u>Five Years on, Rothstein's Ponzi Still Resonates</u>			
322	10/3/17	<u>Palm Beach Daily News. Epstein Paid Three Women \$5.5 Million to End Underage Sex Lawsuits</u>			
General					
323		All public records and news articles relating to Scott Rothstein, Rothstein Rosenfeldt Adler, Bradley J. Edwards and any witnesses listed by either party			
324		All court dockets and filings in all matters against Jeffrey Epstein relating to any victim's claims			
325		All prior testimony, statements, reports and affidavits of any witness or experts			
326		All charts/analyses prepared based on documents exchanged or later discovered			
327		All foundation exhibits			
328		All rebuttal and impeachment exhibits			
329		Demonstrative aids and exhibits including, but not limited to, charts, timelines, diagrams, models, surveys, photographs and blow-ups			
330		All newly discovered documents/exhibits			
331		Any and all exhibits listed by Bradley J. Edwards (by identifying these as exhibits, Plaintiff is not waiving his right to object to any of Edwards' exhibits introduced at trial)			

Plaintiff/Counter-Defendant reserves his right to supplement this Exhibit List.

CERTIFICATE OF SERVICE

I certify that the foregoing document has been furnished to the attorneys listed on the Service List below on November 16, 2017, through the Court's e-filing portal pursuant to Florida Rule of Judicial Administration 2.516(b)(1).

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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-Plaintiffs.

TRANSCRIPT OF PROCEEDINGS

DATE TAKEN: Thursday, March 8th, 2018
TIME: 1:30 p.m. - 4:50 p.m.
PLACE 205 N. Dixie Highway, Room 10D
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:

Elaine V. Williams
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19

20

21

22

23

24

25

1 P R O C E E D I N G S

2 - - -

3 THE COURT: Thank you. Welcome back
4 everybody. Have a seat.

5 MR. SCAROLA: May I move to this podium now?

6 THE COURT: Sure.

7 MR. SCAROLA: Thank you, sir.

8 Your Honor, have we decided what motions we're
9 going to hear?10 THE COURT: Yes. My understanding as I left
11 was going to be Edwards' Second Supplement to
12 Motion in Limine Addressing Scope of Admissible
13 Evidence, and of course in that same vein Epstein's
14 Notice of Service of Unredacted Appendix in
15 Support -- or Response in Opposition to Edwards'
16 Second Supplemental Motion in Limine addressing
17 Scope of Admissible Evidence.18 MR. SCAROLA: Your Honor, there are actually
19 multiple submissions to the Court to deal with
20 closely-related issues, and those issues arise out
21 of the fact that over the course of the last three
22 weeks 724 new exhibits have been added to the
23 exhibit list of the defendant Epstein.24 And just to provide some general background,
25 some of which your Honor may recall, there was an

1 exhibit list filed by Mr. Epstein on November 16,
2 2017. That same exhibit list was attached to the
3 pretrial stipulation on December 22, 2017. And
4 then for the first time on March 5th of 2018 the
5 new exhibit list was filed. If you compare the
6 exhibit lists of November 16th and December 22nd,
7 which, as I said, are the same, with the March 5th
8 exhibit list, 25 new exhibits -- excuse me -- 724
9 new exhibits were added.

10 Your Honor held a hearing in this matter on
11 December 5th and made it clear to all parties that
12 exhibits that were not disclosed by the end of
13 December -- and I think it may have been the
14 December 22 date -- I'm not sure about that exact
15 date -- but exhibits that were not specifically
16 disclosed would not be permitted to be used at
17 trial. You made it clear that catchall listings
18 would be unacceptable; that specific individual
19 exhibits needed to be listed. I'm sure your Honor
20 has a recollection of those circumstances. And
21 that, obviously, is a fairly standard order that
22 your Honor adheres to in connection with trial
23 practice.

24 THE COURT: What I just wanted to point out is
25 in conjunction with what we're going to be

1 eventually talking about, we're now dealing with
2 the Motion to Strike Epstein's Untimely
3 Supplemental Exhibits and to Strike All Exhibits
4 and Any Reference to Documents Containing
5 Privileged Materials Listed on Edwards' Privilege
6 Log.

7 MR. SCAROLA: Yes, sir.

8 THE COURT: That led into what I described
9 earlier of the motions that will be on the table.

10 MR. SCAROLA: That's correct. And that's why
11 I acknowledged, your Honor, that we're really
12 dealing with a number of closely-related motions.

13 So the first issue is a procedural issue; and
14 that is, whether your Honor is going to allow the
15 listing and use of 724 new exhibits. And my
16 suggestion to the Court is that that is a threshold
17 issue that really helps to resolve much of what
18 follows because if, as a matter of procedure, those
19 724 new exhibits are not going to be used, then
20 much of the rest of the argument becomes
21 irrelevant. There are, however, very significant
22 substantive issues if the procedural determination
23 does not dispose of the use of those exhibits.

24 THE COURT: These exhibits specifically were
25 added when?

1 MR. SCAROLA: They were added by a new list
2 filed on March 5th of 2018.

3 THE COURT: Okay. Just to put this into
4 perspective, March 5th would have been Monday of
5 this week, today being March 8th, and the trial
6 starting on March 13th, presuming it begins as
7 scheduled.

8 MR. SCAROLA: Yes, sir. But I want to make it
9 clear that while the 724 were never listed on a
10 prior exhibit list before March 5, some of those
11 documents were disclosed to us over the past three
12 weeks. So I am not suggesting to your Honor that
13 the first notice we got of an intent to attempt to
14 use these documents was March 5. The first notice
15 we got of an intent to attempt to use some of these
16 documents started some three weeks ago as new
17 disclosures were sent to us.

18 And again, this is from memory, but I think
19 there may have been three separate groups of
20 documents that were sent to us not covering all of
21 the 724. And obviously, your Honor knows from the
22 materials that you have reviewed much attention was
23 focused on documents that we contend and have
24 contended for eight years are privileged documents.
25 Documents listed on a very specific privilege log.

1 And those are 45 of the 724 newly-listed documents.

2 And those documents were brought to our attention
3 just last week.

4 So my suggestion to your Honor is that we deal
5 first with the procedural issue because, as I said,
6 that will narrow issues significantly. And then
7 there will still remain some substantive issues
8 with regard specifically to any attempted use of
9 privileged materials.

10 Now, your Honor heard from both opposing
11 counsel that I have accused them of having stolen
12 the documents. I assure your Honor that that's not
13 the case. I have not accused them of having stolen
14 the documents. What I have said in repeated
15 communication is that these are stolen documents.
16 And these documents, if your Honor has had an
17 opportunity to look at the timeline, were very
18 clearly at this point handed over by the bankruptcy
19 court to Fowler White for one purpose and one
20 purpose only; and that was to print them out, Bates
21 stamp them so that they could be turned over for
22 privilege review by the Farmer Jaffe law firm,
23 including specifically Brad Edwards.

24 THE COURT: Let me stop you there so we can
25 put this in context.

1 Joe Ackerman, as I recollect, was representing
2 Mr. Epstein for some period of time, and he was at
3 that juncture associated with the Fowler White firm
4 in some capacity.

5 MR. SCAROLA: Yes, sir. That's correct.

6 THE COURT: So if I'm understanding this
7 correctly then, the bankruptcy court turned the
8 documents over to Fowler White.

9 MR. SCAROLA: Did your Honor want me to get
10 into that now? I'm happy to do that.

11 THE COURT: So that I understand. I know
12 during a very tumultuous period of time these would
13 be the Rothstein firm's employee.

14 MR. SCAROLA: Yes, sir. Let me go through
15 this and give you a quick overview, although all
16 the details are provided in the timeline that I
17 provided to your Honor.

18 What happened was that almost immediately
19 following the implosion of the Rothstein,
20 Rosenfeldt, Adler firm a trustee was appointed by
21 the bankruptcy court to take control of the firm,
22 and that trustee took control of all of the firm's
23 files and all of the firm's electronic data,
24 including all of its e-mail servers. So it is the
25 trustee that had possession of all of these

1 e-mails.

2 Mr. Epstein through counsel, and at this point
3 it was the Fowler White firm, issued a subpoena in
4 our civil litigation, then pending in front of
5 Judge Crow, for the trustee to produce all of the
6 e-mails. Judge Ray, to whom that subpoena was
7 referred, Judge Ray appointed Judge Carney as a
8 special master to make a determination as to what
9 could appropriately be turned over because
10 obviously these were e-mails that related to a wide
11 variety of cases. It was the entire contents of
12 the e-mail server of Rothstein, Rosenfeldt, Adler,
13 and it was recognized that those e-mails could
14 contain attorney/client and work product privileged
15 materials. So Judge Carney was appointed a special
16 master to make a determination as to what should
17 and could be turned over and report back to Judge
18 Ray.

19 Judge Carney gets 27,000 e-mails and Judge
20 Carney says, "I don't have an appreciation as to
21 what may be privileged here. We need to come up
22 with a procedure so that I can be advised of what
23 privilege assertions are being raised." So Judge
24 Carney says, "I want what was then the newly-formed
25 law firm that Mr. Edwards is working in, I want

1 Jaffe, Weissing, Edwards, Fistos and Lehrman" --

2 THE COURT: Farmer Jaffe, right?

3 MR. SCAROLA: Yes. Farmer Jaffe.

4 THE COURT: We can just refer to them as

5 Farmer Jaffe.

6 MR. SCAROLA: All right. "I want Farmer Jaffe
7 to go through these e-mails and prepare a privilege
8 log. Let me know what's privileged here, and then
9 I'll make a determination as to what's going to get
10 turned over."

11 The response from Mr. Edward through me is
12 this is 27,000 e-mails, they want them, they should
13 be responsible for printing them and Bates stamping
14 them and delivering those printed and Bates stamped
15 documents to us for our review. And Judge Ray
16 enters an order.

17 And Judge Ray says in his order -- and it's
18 quoted in relevant part at the bottom of the first
19 page of this timeline -- Judge Ray says the law
20 firm of Fowler White will print a hard copy of all
21 the documents contained on the disks with Bates
22 numbers added and will provide a set of copied,
23 stamped documents to the special master and an
24 identical set to Farmer, who will use the same to
25 create its privilege log.

1 And Judge Ray, federal bankruptcy Judge Ray,
2 says, "Fowler White will not retain any copies of
3 the documents contained on the disk provided to it
4 nor shall any images or copies of said documents be
5 retained in the memory of Fowler White's copiers.
6 Should it be determined that Fowler White or
7 Epstein retained images or copies of the subject
8 documents on its computer or otherwise, the Court
9 retains jurisdiction to award sanctions in favor of
10 Farmer, Brad Edwards or his client."

11 So it was obvious that what was to happen at
12 that point was they were to take over the
13 ministerial task as officers of the court of
14 bearing the expense to turn these documents over to
15 Farmer Jaffe and Brad Edwards for purposes of
16 preparing a privilege log.

17 THE COURT: For lack of a better metaphor,
18 though, wasn't that a fox in a henhouse type of
19 situation?

20 MR. SCAROLA: Well, sir, were these not
21 officers of the court, the answer to that question
22 is yes. These were adversaries who were being
23 given control over these documents, but they were
24 adversaries who had a sworn duty to follow the
25 Court's direction. And we had every reason to

1 believe that this respected law firm and these
2 respected lawyers would do exactly what they were
3 told to do.

4 Now, we know that the disk that contained that
5 information, as has been conceded by Epstein's
6 counsel, was formatted on December 10 -- excuse
7 me -- December 8th of 2010.

8 THE COURT: What do you mean by the disk was
9 formatted?

10 MR. SCAROLA: What I mean was the documents on
11 that disk were divided into three different
12 categories.

13 THE COURT: And that was December 10?

14 MR. SCAROLA: December 8th of 2010.

15 THE COURT: Thank you.

16 MR. SCAROLA: So within approximately one week
17 after being ordered not to retain any copies
18 there's a disk that is formatted by Fowler White,
19 which is the disk that is now in the possession of
20 Jeffrey Epstein and Jeffrey Epstein's counsel. And
21 it contains without a doubt those documents that we
22 identify on a privilege log that is generated as a
23 consequence of that process. It contains those
24 privileged and attorney work product e-mails. And
25 that assertion of privilege has never been

1 overruled.

2 THE COURT: Did the Special Magistrate Carney
3 or Judge Ray ever hold a hearing to determine the
4 nature of the privilege? Was that ever called up
5 for a hearing?

6 MR. SCAROLA: What happened, your Honor, is
7 that Judge Crow, when he learned of the
8 circumstances of what was going on in bankruptcy
9 court, communicated to Judge Carney, "This subpoena
10 was issued in my case. While I respect you and the
11 work you are doing, it is my job to decide what is
12 relevant and material in my case and it is my job
13 to determine issues of privilege in my case." That
14 short circuited the work that was going on in the
15 bankruptcy court, and Judge Carney never issued any
16 rulings in that regard.

17 So it then became a matter over which Judge
18 Crow was exercising jurisdiction to determine how
19 the subpoena issued in the Circuit Court State
20 Court case, how that subpoena was going to be
21 responded to. So our privilege log goes to Judge
22 Crow.

23 And there's some back and forth about whether
24 the privilege log is or is not adequate, and there
25 is a direction with regard to certain requests for

1 documents on the privilege log. Specifically,
2 there is a Request Number 13, which asks for
3 communications between Farmer Jaffe and the federal
4 government and communications between Farmer Jaffe
5 and any members of the press. And those are
6 ordered turned over. And those are turned over in
7 full compliance with the Court's order. But the
8 issues of privilege that were raised with regard to
9 both attorney-client and work product privilege
10 never gets ruled on by Judge Crow because before
11 they are ruled on, a voluntary dismissal is taken
12 of the claims against Brad Edwards.

13 So we have a privilege log in place. It
14 specifically lists these documents. Some of these
15 documents were listed as attorneys' eyes only. And
16 that restriction has never been lifted. And some
17 of these documents are listed on the separate
18 privilege log, and those restrictions have never
19 been lifted.

20 Now, in some of the communications that have
21 gone on back and forth you may have seen reference
22 to a disclosure to the Razorback defendants.

23 Excuse me. The Razorback plaintiffs.

24 THE COURT: That was the litigation led by
25 Mr. Scherer.

1 MR. SCAROLA: That is correct. The Conrad
2 Scherer firm was involved in that litigation, and
3 the Conrad Scherer firm was also interested in
4 getting to take a look at whatever relevant e-mails
5 might have been in the hands of the bankruptcy
6 trustee, and then got turned over to us.

7 Well, there were direct negotiations in which
8 I was a personal participant with the lawyers for
9 Conrad Scherer, and an agreement was reached with
10 the lawyers for Conrad Scherer because, as we have
11 told every judge before whom we have appeared with
12 regard to these matters, we're not attempting to
13 hide anything. You want to conduct an in-camera
14 inspection, we want you to conduct an in-camera
15 inspection because it will confirm that we're not
16 attempting to hide anything.

17 We will turn over anything that you consider
18 appropriate for us to turn over. But we have no
19 ability to waive our client's attorney-client
20 privilege, your Honor, and some of these e-mails
21 clearly contain information that originated with
22 clients. And we are in the midst at this point of
23 still-pending litigation, and it is important for
24 us to protect our work product privilege as well.
25 Some of that litigation is still ongoing right now.

1 That's the Crime Victims Rights Act case.

2 So there is a very legitimate reason for us to
3 be concerned about protecting both the work product
4 privilege and the attorney/client privilege,
5 particularly protecting it from Mr. Epstein, and
6 particularly protecting it from Mr. Epstein now
7 that we know there was a clear violation of the
8 federal judge's order with regard to the matter in
9 which these materials were to be handled.

10 Interestingly -- and I don't know whether
11 there's any relationship or not -- but shortly
12 after this disk is improperly retained by Fowler
13 White, that Fowler White winds up withdrawing from
14 the case. So they're gone. And apparently the
15 disk sits there for years until a request is made
16 to turn over all of Fowler White files.

17 And what we have been told is Fowler White
18 initially, for whatever reason, resists that
19 request, but Mr. Link and associates go down to
20 Miami, they review files, they get their hands on
21 this disk. There is a significant delay between
22 their appearance in the case and when they finally
23 go to look at the Fowler White files. Then there's
24 a two-week delay between looking at the Fowler
25 White files and receiving the disk. And then

1 there's a two-week delay between receiving the disk
2 and starting to --

3 THE COURT: Excuse me just a minute.

4 Bailiff, see what may be transpiring outside,
5 please. Pardon me. Off the record.

6 (Discussion held off the record.)

7 THE COURT: Go ahead. I apologize.

8 MR. SCAROLA: Your Honor, in the overall
9 scheme of things, I don't think that those delays
10 make very much difference at all. But these are
11 the lawyers who, as your Honor has noted, announced
12 to the Court that they were going to be ready for
13 trial 90 days later, and here it is just weeks
14 before this case is about to begin that they are
15 first reviewing 36 boxes, or over 30 boxes of
16 files. Might have been 31. I think 36 is the
17 number. But boxes of files that never even got
18 reviewed by them.

19 So those are matters of significant concern to
20 us. But the matter of greatest concern is that
21 once it becomes apparent that these are documents
22 that are listed on our privilege log, a privilege
23 that has never been challenged, a privilege that
24 remains in place, and we notify opposing counsel
25 here is our privilege log, here are the numbers,

1 the Bates numbers of these documents on that
2 privilege log, you have an obligation, an ethical
3 obligation, to turn them over to us, to turn them
4 over now, and to make no use of those documents
5 unless and until you have a court order that says
6 otherwise. You need to tell us where did you get
7 them, when did you get them, how did you get them,
8 to whom have you distributed them? And those are
9 questions that we still don't have answered.

10 What we get from the other side is, "Well,
11 they could have come from here, they could have
12 come from there, maybe they came from someplace
13 else, we don't know." And if they don't know where
14 they came from and that source is clearly a proper
15 source, they have the burden in overcoming this
16 privilege assertion to prove a waiver if they
17 contend any waiver existed.

18 It wasn't with regard to Conrad Scherer
19 because when those documents were turned over to
20 Conrad Scherer -- and we have the letters that
21 confirm the written agreement with every detail of
22 that agreement in place -- those were turned over
23 as part of a common interest privilege with an
24 express representation it was attorneys' eyes only,
25 with an express representation they would be turned

1 over to no one. Indeed, when they got turned over
2 to Conrad Scherer, they were originally turned over
3 with a confidentiality watermark on every document.

4 And then they contacted us back again and
5 said, "We're trying to OCR all of these documents
6 so that they are searchable, and we can't do that
7 with the watermark on them. Can you please provide
8 us with another copy without a watermark?" And we
9 did that; again, trusting these officers of the
10 court to abide by their agreement. And we have
11 every reason to believe that Conrad Scherer did.
12 They were not the source.

13 The obvious source, based now upon what we
14 have been able to piece together, is very clearly
15 Fowler White's improper retention of this material
16 after they had been expressly ordered by the
17 federal court not to retain any of it.

18 Now, every representation I have made to the
19 Court, everything that is included on this timeline
20 can be established through documents that pinpoint
21 the dates and the identity of the individuals
22 involved and the character of every disclosure that
23 was made and every disclosure that was withheld.
24 It has taken a substantial effort to put all of
25 this together again. We have been working on this

1 many, many, many hours. But the subject of
2 appropriate sanctions is a subject for another day
3 except to this extent: We need to know who has
4 access, who has had access to this confidential
5 material. We need to know if there's some intent
6 to call a witness who may have been given access to
7 this confidential material. We need to know all of
8 the lawyers involved.

9 And Mr. Cassell is going to address from the
10 perspective of the clients the concern that they
11 have about being informed as to how their
12 confidences have been breached. So with your
13 Honor's permission, I would like him to have an
14 opportunity to address the Court briefly on that
15 topic.

16 THE COURT: What I'd like to do, though, is
17 allow defense counsel to be able to speak to the
18 threshold Binger analysis dealing with the late
19 disclosure, because if Mr. Scarola is right and
20 that is that these exhibits were listed for the
21 first time in March, which would have been three
22 days ago, and discussed perhaps within the last few
23 weeks, then we would have essentially a Binger
24 issue to analyze. So Miss Rockenbach, go ahead and
25 proceed in that respect, please.

1 MS. ROCKENBACH: Thank you, your Honor. I am
2 certain that this courtroom is a place where we are
3 searching for truth and not hiding evidence,
4 whether it is evidence that causes conclusion by
5 this Court that there is no case to be tried. And
6 for the first time after four days of -- and we use
7 that word --

8 MR. SCAROLA: Excuse me. I'm sorry. If this
9 is one of the privileged e-mails, and I assume it
10 probably is, your Honor has entered an order
11 sealing these documents, and the press is present.
12 It is being displayed prominently in violation of
13 ethical obligations to relinquish possession of
14 these documents.

15 THE COURT: All right. In lieu of publication
16 in open court, why don't you just hand me the
17 document, making sure that counsel also has the
18 copy or is referenced with the correct Bates stamp.

19 MS. ROCKENBACH: This is the Bates stamp
20 e-mail 04408; an e-mail from Bradley Edwards to
21 Paul Cassell, October 17, 2009.

22 THE COURT: Okay. Is this an extra copy?

23 MR. SCAROLA: Do we have an extra copy,
24 please? There are literally thousands of e-mails
25 we're dealing with.

1 MR. LINK: It's in the appendix that we've
2 provided you.

3 THE COURT: I'm familiar with it from reading
4 the materials myself and I could probably put my
5 hands on it.

6 MR. LINK: It's in the appendix, your Honor.
7 Appendix 1.

8 MR. VITALE: Bates number?

9 MS. TERRY: 04408.

10 MS. ROCKENBACH: That's it. Thank you.

11 THE COURT: And I have it, too. I can get my
12 hands on it pretty easily, I think.

13 MR. CASSELL: Your Honor, if I could just be
14 heard just briefly.

15 THE COURT: Go ahead and introduce yourself to
16 our new court reporter.

17 MR. CASSELL: Paul Cassell on behalf of three
18 victims, LM, EW and Jane Doe.

19 We'd like the record to be clear that we're
20 joining in the objection to any public disclosure
21 or reference to these documents.

22 THE COURT: Well, reference and public
23 disclosure are two different things, Mr. Cassell.

24 MR. CASSELL: I'm sorry. Any disclosure of
25 the contents or the substance of these documents.

1 THE COURT: Outside of the Court's review?

2 Are you objecting to my review?

3 MR. CASSELL: No. We're not waiving any
4 privileges, but we don't want there to be any
5 public reference to the contents.

6 THE COURT: All right. Thank you for that
7 clarification. So let me go ahead and try and put
8 my hands on --

9 MS. ROCKENBACH: Your Honor, I can give you
10 the copy that Terry noted was 04408. I don't need
11 it.

12 THE COURT: Okay, that's fine.

13 MS. ROCKENBACH: The purpose of me putting
14 this particular piece of evidence, which I've been
15 asked on multiple occasions by Mr. Scarola to
16 destroy by the barrage of e-mails over the past
17 four days, I'm handing it to the Court as evidence
18 of no Binger surprise. It can't be Binger surprise
19 by Mr. Edwards if he is authoring an e-mail with
20 regard to this very action that's pending before
21 this Court about five to six weeks before
22 Mr. Epstein sued him. So that can't be a surprise
23 to Mr. Edwards. It actually makes this case
24 incredibly stronger for the issue of probable
25 cause.

1 But more importantly, your Honor, it's about
2 the truth. It's about the truth and the fact that
3 over the past four days my professional integrity,
4 my character has been impugned to the extent that
5 very simply we told -- actually, I didn't respond
6 to any single e-mail. For the record, Mr. Link
7 responded to e-mails. I didn't want to respond to
8 what I saw was escalating e-mails that started off
9 with a demand that we destroy evidence, which I
10 know as an officer of the court I cannot do, and a
11 demand to disclose who, how, where. And we
12 immediately did. Fowler White.

13 Then I had my paralegal issue an affidavit
14 that established chain of custody. I obtained the
15 Fed Ex receipts for the three boxes that contained
16 this incredible disk. And that's on file with the
17 court.

18 But the e-mails did escalate, and we were
19 asked -- no, demanded -- demanded on multiple times
20 to destroy evidence. I was called unethical more
21 than four times, sanctions were mentioned, the
22 words improper, unethical, six times, hid,
23 disturbing, misdeeds. And then last, but not
24 least, Mr. Scarola did in fact -- and this is not
25 privileged -- did in fact send an e-mail indicating

1 that he didn't want a special master, declined our
2 request for one because it does not take a special
3 master to determine that stolen privileged
4 documents -- this is for the first week, or the
5 first time the week before trial -- are
6 inadmissible. I disagree.

7 No court has looked at these e-mails. And
8 your Honor just asked that question, which was
9 really important, did Judge Crow look at these
10 in-camera and determine the privilege issue?

11 So I am very pleased and I agree with
12 Mr. Scarola for the first time I heard just now a
13 request or an agreement, not even a request, an
14 agreement that these should be looked at in-camera.
15 They absolutely should be looked at in-camera
16 because they eviscerate Mr. Epstein's malicious
17 prosecution case from proceeding.

18 THE COURT: Mr. Edwards.

19 MS. ROCKENBACH: Mr. Edwards.

20 But so disturbed was I by the barrage of
21 e-mails, I reached out to the former ethics
22 director of the Florida bar, a trusted colleague,
23 Tim Chinaris. I have the affidavit. I don't know
24 if your Honor has.

25 THE COURT: I don't remember seeing it.

1 MS. ROCKENBACH: It was very significant
2 because I was being asked to destroy evidence, I
3 was being called unethical for the first time in 23
4 years, and then I saw the word stolen, and honestly
5 my heart was broken. So Mr. Chinaris has an
6 affidavit that I've filed with the Court. He knows
7 the information --

8 THE COURT: Is that in this?

9 MR. LINK: Your Honor, it's in the package we
10 delivered right before lunch.

11 THE COURT: Okay. I'll be glad to take a look
12 at it.

13 MS. ROCKENBACH: He was the ethics director
14 for the Florida Bar for almost a decade, authoring
15 thousands of opinions on legal ethics for lawyers
16 facing issues with regard to the rules of
17 regulating the Florida Bar.

18 One of the rules that I was thinking about in
19 terms of this hearing was 4-3.3 because both sides,
20 including Mr. Edwards, who happens to be party but
21 should be held to a higher standard than just a
22 simple party, has a duty to disclose candor toward
23 the tribunal. That Florida 4-3.3 rule is very
24 significant in this case because no one can advance
25 false statements or positions to this Court.

1 These e-mails, your Honor, go to the very
2 heart of this malicious prosecution case and
3 whether it can proceed.

4 But returning to Mr. Chinaris, he had three
5 opinions after reviewing the relevant documents,
6 speaking to both Mr. Link and myself, based on the
7 escalating accusations over the course of four
8 days. And his three opinions are reflected in
9 paragraphs 29, 30 and 31.

10 Mr. Link and Miss Rockenbach have acted in an
11 ethically proper manner. That was one. Number
12 two, the documents in question were not
13 inadvertently provided nor wrongfully obtained by
14 Mr. Link and Miss Rockenbach --

15 MR. SCAROLA: Excuse me. Your Honor, if this
16 is going to turn into an evidentiary hearing with
17 regard to the ethical propriety of opposing
18 counsel's conduct, I object to this affidavit as
19 hearsay and I want to be able to cross-examine any
20 ethics expert who is of the opinion that retaining
21 privileged documents known to be privileged listed
22 on a privilege log when there is no knowledge as to
23 the source of those documents and a court order
24 exists saying you're not allowed to have them, I
25 want to cross-examine that expert.

1 THE COURT: Well, the objection is sustained
2 in the sense that I really do want to, as I
3 indicated earlier, continue to as best as we can
4 conduct the proceedings in a way that befits the
5 known integrity of not only the attorneys here
6 before us but also the history that has been
7 pervasive in the 15th Judicial Circuit. So I don't
8 want this to dissolve into an ethical discussion as
9 to whether or not someone committed some type of
10 ethical violation. That's really not my focus
11 today. And that focus is better suited for others
12 perhaps at a different time and even perhaps in a
13 different forum.

14 Really what has to be attempted to be divined
15 today is some type of representation by counsel for
16 Mr. Epstein as to what the source of these
17 documents were.

18 MS. ROCKENBACH: Yes, your Honor.

19 THE COURT: Why were they preserved, how were
20 they preserved, for what reason were they
21 preserved, did that preservation violate or come
22 close to violating an order of the bankruptcy
23 court, has the privilege been waived? And then we
24 get back again to the Binger analysis.

25 I did a quick word search, and the Fifth

1 District provides us with some recent direction and
2 assistance and talks about the issue of surprise.

3 And it says, quote, "The opposing party also
4 earlier attempted to exclude the surprise testimony
5 by an unsuccessful motion in limine. Furthermore,
6 prejudice in the context of Binger refers to the
7 surprise in fact of the objecting party and is not
8 dependent upon the adverse nature of the
9 testimony." So that's where we are also going to be
10 focusing today.

11 But I don't want to get into a discussion as
12 to present counsel's ethical responsibilities
13 unless we have to as it relates to the origin of
14 how, if counsel is aware, these documents inclusive
15 of the e-mails, and particularly as it relates to
16 the 724 allegedly new exhibits being added formally
17 for the first time on March 5th, just three days
18 ago, and certainly outside of the Court's pretrial
19 order in terms of timeliness, whether they
20 constitute prejudice. So let's try to focus there,
21 if we could.

22 And I understand, just so the record is clear,
23 doing this for a long time both as a trial lawyer
24 and as a judge, I understand how feelings can be
25 hurt, I understand how people can take umbrage at

1 certain things that are said.

2 The beauty of being an experienced trial
3 judge, if nothing else, is developing a thick skin.
4 Sometimes I'll hear people say something and use my
5 name and they don't even know I'm standing there.

6 MR. LINK: That wasn't me, was it, Judge?

7 THE COURT: No. And I understand that there
8 are going to be instances where people are going to
9 think that I'm the best in the world and the
10 absolute worst in the universe. I've come to that
11 rationale pretty quickly. It took some time, but
12 it was fairly quickly. But I do understand. I
13 don't want anyone to think that I'm not
14 compassionate to the extent that I recognize that
15 there have been accusations hurled here which may
16 be minimally considered offensive and accusatory.
17 But let's move beyond that for now and let's get to
18 some of the issues that I discussed earlier that we
19 can focus on relating to decisions that I'll have
20 to make concerning the potential admissibility of
21 this evidence.

22 MS. ROCKENBACH: Thank you, your Honor. I
23 appreciate that.

24 And we have established the chain of custody
25 through the affidavit of Tina Campbell from our

1 office. So it is clear we did not improperly
2 obtain them, nor were they inadvertently disclosed
3 to us.

4 THE COURT: Tina Campbell is your paralegal?

5 MS. ROCKENBACH: Who obtained the three boxes,
6 the three boxes from Fowler White, which contained
7 that CD which is at issue.

8 THE COURT: I think the disconnect we're
9 having here today is not so much the fact that
10 Miss Campbell received the boxes or somebody got
11 notice that the boxes were there --

12 MS. ROCKENBACH: It was an issue.

13 THE COURT: -- and that somebody did what they
14 did. And there may have been an issue with regard
15 to Fowler White voluntarily turning them over.
16 Those are things that can be dealt with later on.
17 And again, it may be a different forum than I'm
18 even dealing with here today.

19 But what I'd like to know is how Fowler White
20 got the documentation, do we to know that, whether
21 or not that documentation was obtained or retained
22 in a manner that either was in violation of Judge
23 Ray's order or walked a certain tightrope that
24 could be construed as a constructive violation of
25 that order. And if we know that, then it would go

1 a long way in me trying to make a determination as
2 it relates to Binger and its progeny.

3 MS. ROCKENBACH: Thank you.

4 THE COURT: So that's really where we need to
5 focus.

6 I have no problem and I don't think
7 Mr. Scarola has any problem in terms of the fact
8 that you all did your homework; albeit, from his
9 position, late in the game, and secured this
10 information from Fowler White. The critical
11 question, though, is why did Fowler White have
12 these documents, why were they continued to be
13 held, and was it in violation either expressly or
14 constructively as it relates to Judge Ray's order?

15 MS. ROCKENBACH: Thank you, your Honor.

16 Mr. Link has studied this issue and will address
17 that.

18 MR. LINK: So, Judge, let me see if I can
19 clarify a couple of things.

20 First, these exhibits that we're talking about
21 from the disk, they absolutely were just listed on
22 our exhibit list. They were just located by us in
23 the last week. However, on our exhibit list it's
24 always been a general category, as Mr. Scarola
25 said. The reason there are 749 specific exhibits

1 is the clerk required it. So --

2 THE COURT: The clerk required it?

3 MR. LINK: Specific. You have got to do --

4 THE COURT: The clerk, you're saying? Or the
5 Court?

6 MR. LINK: The Court.

7 THE COURT: Oh, okay. I thought you were
8 saying --

9 MR. LINK: It's called the clerk's exhibit
10 list for the Court, but the Court did it.

11 THE COURT: So in conjunction with an order
12 that I had made earlier in the proceeding that I
13 was not going to allow general catchall types of
14 exhibit identification, I required that each and
15 every exhibit be specifically listed. And we've
16 gone through myriad exhibits in our quest to
17 determine whether or not, for example, the Fifth
18 Amendment privilege is going to be recognized and
19 other issues having to do with admissibility. And
20 that was generally followed, to my recollection,
21 because I dealt with many specifically identifiable
22 exhibits. So yes, I agree that that was something
23 that the Court had a specific interest in and has
24 always taken the position that all cards are going
25 to be on the table in a timely fashion so that,

1 number one, first and foremost once all the cards
2 are on the table, the law favors settlement, and it
3 may come to fruition, and has more often than not
4 resulted in an amicable resolution to a case. And
5 as importantly, both sides are adequately prepared
6 so that, as I mentioned in this Pollard case, no
7 one is unduly surprised by something that comes
8 before them at or near the beginning of trial.

9 MR. LINK: Yes, sir. So that is why we did
10 that.

11 The second thing I want to point out to the
12 Court is that Mr. Edwards did the same thing and
13 filed exhibits after the order, just like we did.
14 And I'm not complaining --

15 THE COURT: Well, if you're not complaining
16 about it --

17 MR. LINK: The reason I want to explain is
18 because in our pretrial stip I'm of the mindset
19 when we reach agreement, we have an agreement. And
20 in our agreement, your court order says no
21 additional exhibits unless the parties agree. In
22 the pretrial stip Mr. Scarola and I agreed we
23 reserved our right to add additional exhibits. So
24 in compliance with the pretrial stip and this
25 Courts' order requiring us to identify them, we've

1 been doing that, sir.

2 THE COURT: Okay.

3 MR. LINK: So we are not in violation of the
4 Court's order. Mr. Scarola and I again agreed to
5 do this.

6 So let's talk about Fowler White because it is
7 as clear as mud. It is not as clear as Mr. Scarola
8 says. Here is why. If you look at his --

9 THE COURT: That metaphor, I'm not sure I
10 understand clear as mud.

11 MR. LINK: It's not clear. That's the point.
12 It's not clear, frankly. So it is not as simple
13 and clear as Mr. Scarola says. And I want to show
14 you why.

15 I honestly cannot tell you, I can't, where the
16 disk came from that end up in Fowler White's file.
17 I can't. We have looked for every piece of
18 communication, correspondence, we've gone through
19 their boxes three times trying to answer that
20 question. We have reached out to lawyers for
21 Fowler White. They have no memory of it. So we,
22 like Mr. Scarola --

23 THE COURT: Excuse me. Is Mr. Ackerman still
24 actively practicing?

25 MR. LINK: He is, yes. And we reached out to

1 Joe Ackerman. Mr. Ackerman. Sorry. We reached
2 out to Mr. Ackerman.

3 Here is why it's confusing. And I think this
4 is really important to understand what happened.

5 When the trustee took over the files, there
6 was an understanding by Mr. Edwards and his firm
7 that there would be about 5,000 e-mails, and they
8 agreed to do a -- go through them and do a
9 privilege log. What's missing from Mr. Scarola's
10 timeline is that in November 2010 Edwards informed
11 the bankruptcy court that the trustee had produced
12 74,000, 74,000 pages of documents on two compact
13 disks. Not one. On two.

14 So then what happened, because of the volume,
15 Mr. Edwards and his firm goes in and says, "Judge,
16 we need more time. We did not know we were going
17 to get 74,000 pieces of paper and we need time to
18 go through them."

19 THE COURT: I may have lost you. The 74,000
20 pages were self-generated from the Rothstein firm?

21 MR. LINK: Yes. And delivered by the trustee
22 to Mr. Edwards.

23 THE COURT: And Mr. Edwards, you're
24 suggesting, indicated that they need more time to
25 review the e-mails or whatever documents --

1 MR. LINK: Correct.

2 THE COURT: -- they may have encompassed, and
3 to raise objections, and that forum was the
4 bankruptcy court.

5 MR. LINK: All this started in the bankruptcy
6 court.

7 So when Mr. Scarola says there was one disk
8 produced by the trustee with 27,000 e-mails on it,
9 that's not true. There are two disks and there's
10 74,000 e-mails. That's what Mr. Edwards
11 represented to the Court. I haven't seen these
12 disks, but that's what Mr. Edwards represented.

13 So what happens after that is there is a
14 complicated negotiation between the Fowler White
15 firm and Mr. Farmer, on behalf of the Farmer Jaffe
16 firm, about how are they going to take these
17 documents, which are not Bates stamped, not Bates
18 stamped, and they wanted a hard copy to review so
19 they could make a privilege log, but they didn't
20 want to pay for it. The trustee didn't want to pay
21 for it.

22 Mr. Epstein volunteered with the special
23 master -- actually, Fowler White -- but
24 Mr. Epstein's counsel volunteered that they would
25 use their machine to print out, print out from the

1 disk that had no Bates stamps on them, documents,
2 and Mr. Farmer agreed to that.

3 So they print the documents out -- long before
4 our time, Judge -- they print the documents out, a
5 set is given back to the trustee, and a set is
6 given to Farmer Jaffe. The machine that prints it,
7 according to the magistrate and all the
8 communications, doesn't retain any image. So we
9 start with two disks. To make it more complicated,
10 there was three. One had a problem. But let's go
11 with two disks and 74,000 pages.

12 They print them out. Hard copy documents.
13 One to the trustee, one to Farmer Jaffe. The
14 magistrate wants a copy, and so you will see the
15 magistrate gets two disks: One with 25,000 images
16 on it and one with -- I can't tell you how many
17 images because the special master says, "I didn't
18 look at it."

19 I think -- this is Scott Link guessing -- I
20 want to be clear about this -- I think the disk
21 that ends up at Fowler White was the special
22 master's disk. And here is why I think that: A,
23 it was in a file that said Special Master. B --
24 none of which makes sense to me until we put this
25 together. B, there's a hearing where Mr. Scarola

1 says to him, "You, special master, review all these
2 documents." Just like he said here, he said it ten
3 times, "We have nothing to hide. You decide what
4 should be turned over." The trail goes cold. I
5 can't find a letter or communication from the
6 special master that says, "I looked. Here they
7 are." But I know this: The disk that was sent to
8 Fowler White to copy had no Bates stamp.

9 When you look at the judge's order from Judge
10 Ray that Mr. Scarola pointed out, it says Fowler
11 White will print a hard copy of all the documents
12 contained on the disk with Bates numbers added.
13 That's how they were going to do it.

14 THE COURT: And that disk, I presume, that
15 you're alluding to did have Bates numbers on them.
16 I'm talking about the individual documents.

17 MR. LINK: Yes, sir. They're all Bates
18 stamped. So they were not the disks
19 provided -- again, I can't say they're not. I'm
20 not testifying. This is Scott Link's forensic
21 review.

22 THE COURT: But again, Mr. Link,
23 respectfully -- and I appreciate you're trying to
24 put together and piece together something that
25 transpired seven years ago -- the problem still

1 remains the same. Frankly, it doesn't really
2 matter to this Court what format it was, who
3 formatted it or to whom it was supposed to be
4 intended. I'm sure there may be cases even after
5 this Worley case that we'll be talking about
6 tomorrow at length at the bar conference, but that
7 case stands for the proposition globally of the
8 sanctity in that particular case of the
9 attorney/client privilege to something so
10 rudimentary as whether or not an attorney referred
11 a client to a given doctor for treatment. And the
12 Supreme Court has clearly stated that information
13 is privileged and will not be divulged.

14 MR. LINK: Yes, sir. I was just trying to
15 answer your question about the disk.

16 THE COURT: Okay. So the point that I'm
17 trying to make is when I'm saying it really doesn't
18 matter, all of those other details, what matters to
19 the Court is, again, Judge Ray's order relative to
20 the sanctity of those documents, for lack of a
21 better term, the protection of those documents at
22 all costs, and that Fowler White shall not with the
23 threat of sanctions retain any of those documents.

24 It says here, "Should it be determined that
25 Fowler White or Epstein" -- so not only does it go

1 to Fowler White, but it goes to Epstein -- and
2 constructively, if not explicitly, by this order
3 extends to Mr. Epstein's legal representatives,
4 from this Court's interpretation.

5 MR. LINK: Yes, sir.

6 THE COURT: "Should it be determined that
7 Fowler White or Epstein retained images or copies
8 of the subject documents on its computer or
9 otherwise, the Court retains jurisdiction to award
10 sanctions in favor of Farmer, Brad Edwards or his
11 client," end quote.

12 MR. LINK: And I agree with that. The
13 bankruptcy court reserved that. What I'm
14 suggesting to the Court is I don't think it's as
15 clear as Mr. Scarola said. And he may go to Judge
16 Ray and Judge Ray will have a hearing. Based on
17 what we've looked at, I don't believe it's as clear
18 that that's what they did because it's possible,
19 based upon what I've read --

20 THE COURT: That Fowler White did?

21 MR. LINK: Yes.

22 THE COURT: So are you suggesting to me
23 that -- so that I'm understanding correctly --

24 MR. LINK: Yes, sir. I'm not here
25 representing Fowler White.

1 THE COURT: I understand. But you're here
2 representing Mr. Epstein, who by virtue of this
3 order that is being highlighted in part on the
4 ELMO, that Fowler White did what it was supposed to
5 do pursuant to that order, returned everything that
6 it was supposed to return, but through some
7 happenstance had the disk containing the very
8 information that was the source of Judge Ray's
9 order and somehow, therefore, should be exonerated
10 by virtue of the fact that because we really don't
11 know how Fowler White may have gotten it, but
12 assuming Fowler White did what it should have done,
13 miraculously this disk turns up in Fowler White's
14 files and hence we should essentially ignore the
15 dictates of the order?

16 MR. LINK: No, sir. And I think I've confused
17 the Court. Let me make sure you understand what's
18 on this disk.

19 The 27,550 pages on this disk, we've only
20 looked at 5,000 of them, okay? Of those 5,000, I
21 will represent to you -- and you can look at
22 them -- I don't believe any -- and I know none that
23 we attached -- were communications between an
24 attorney and a client.

25 I asked Mr. Cassell and I asked Mr. Scarola to

1 identify by Bates number if there are any
2 attorney/client communications and we would
3 segregate them. The response I got, every page is
4 an attorney/client communication. So that's one.

5 THE COURT: But that's not what this order
6 says, Mr. Link. The order doesn't say anything
7 about privileged documents.

8 MR. LINK: Judge, I understand that.

9 THE COURT: The order says that Fowler White
10 will not retain any copies of the documents
11 contained on the disk provided to it nor shall any
12 images or copies of said documents be retained in
13 the memory of Fowler White's copies. And we
14 already went through the sanctions.

15 MR. LINK: But we don't know -- here is the
16 disconnect: We don't know as we sit here that the
17 disk that we located there wasn't handed to them by
18 Special Master Carney after Mr. Scarola gave him
19 the job and said look at it and give them whatever
20 you think is okay because the majority of the
21 documents we've looked at have to deal with
22 scheduling and sporting events and going out
23 drinking and all kinds of things. It is not a
24 group of documents that are on the privilege log.

25 Here is the second thing we learned --

1 THE COURT: And is that going to serve as the
2 conduit to attempt to admit these documents into
3 evidence in the face of the order that I have just
4 read?

5 MR. LINK: Your Honor, I see the order. What
6 I'm trying to get across -- I'm doing a lousy job.

7 THE COURT: No, you're not.

8 MR. LINK: -- is that I can't tell you.

9 THE COURT: Try to get to the point that I'm
10 really --

11 MR. LINK: I don't think that we can conclude
12 today that this disk is a result of their violating
13 this order. This disk could have been as a result
14 of the special master looking at it and saying, "I
15 don't see communications between attorney/client, I
16 believe there's been a waiver of the work product
17 based on giving it to Razorback, issue injection,
18 all of these issues have been raised."

19 THE COURT: So now you're suggesting that
20 former Judge Carney, to my knowledge a very well -
21 respected jurist who presided in the Circuit Court
22 in Broward County, to my knowledge, and has done
23 senior work here in the 15th Judicial Circuit
24 somehow engaged in some type of ex parte
25 communications with Fowler White?

1 MR. LINK: Judge, I can't because I've looked.
2 I have searched. I'm not saying that at all. All
3 I can piece together is that Mr. Scarola asked
4 Special Master Carney to do that.

5 This disk, when we got -- we put a sticker on
6 it. We went and looked at boxes and put stickers
7 on things. The disk said Epstein Bates stamp. Had
8 no idea what was on it. Looked like something we
9 should put a sticker on. It came in, the disk, and
10 we started looking at it.

11 When these issues came up, we asked Fowler
12 White to please give us the original boxes. We got
13 the original boxes and found the disk in a folder
14 that says J. Carney printing on it. That's it.
15 That's all that's on this folder.

16 There's no watermarks, there's no
17 confidentiality agreement, there's no stamps on the
18 documents. They are Bates stamped and there's a
19 disk in there. So what I'm suggesting is if we're
20 trying to figure out whether Fowler White violated
21 the order, I don't think it's as clear as
22 Mr. Scarola says.

23 Now, I wasn't there. I can't tell you what
24 they did, Judge. But I do know this: Many of the
25 documents that are on this disk and that are on

1 their privilege log have been used in this
2 litigation. They have been used. They have
3 produced some. They're exhibits that Mr. Edwards
4 has asked about and answered that are on this
5 privilege log. There's over a hundred of them.

6 So this disk is not a disk of their privileged
7 documents. It's a disk of 27,500 documents. And
8 what's the most important part of this is Judge
9 Crow never held an in-camera. Nobody judicially
10 has looked at these. And that's where we need to
11 be.

12 I don't think any of this matters. What
13 matters is we have the records, they're relevant,
14 this Court should determine they're relevant, see
15 if there's a privilege and see if that privilege
16 has been waived. That should be the process.

17 THE COURT: On Thursday afternoon, which is
18 going to be taken up by additional argument, where
19 Friday I'm a committed member to the Bench Bar, as
20 is encouraged not only by the 15th Judicial Circuit
21 and Fourth District Court of Appeal but also by our
22 local Bar Association, of which many of you are
23 prominent members here, so you know that commitment
24 must be taken seriously, and I do take it
25 seriously, and then Friday I'm booked up with

1 hearings on other matters of the 14- to 15 hundred
2 files that I'm carrying in this division, of which
3 this is but one, with the trial to commence on the
4 morning of Tuesday, the 13th of March.

5 MR. LINK: Yes, sir.

6 THE COURT: That's a big endeavor. That is an
7 endeavor that is beyond this Court's ability
8 physically and from a time perspective. So I'm not
9 going to do that.

10 MR. LINK: Your Honor, I know that you don't
11 have the time. I have offered them a special
12 master. They don't want to.

13 THE COURT: It's just too late.

14 MR. LINK: But Judge, the truth is never too
15 late.

16 THE COURT: Please don't interrupt me.

17 MR. LINK: I apologize for that.

18 THE COURT: Protocol dictates the orderly
19 administration of justice and, correspondingly, the
20 orderly preparation for trial. That preparation --
21 and you'll be surprised when it comes to larger
22 cases like this -- not only applies to counsel and
23 their team of attorneys that the respective side
24 have, but it also applies to the singular
25 individual who is responsible for this orderly

1 presentation.

2 I often refer to a case that I printed
3 directly from the Fourth District Court of Appeal,
4 RJ Reynolds Tobacco Company versus Calloway, and it
5 talks about the trial judge's ultimate
6 responsibility. There it was to ensure appropriate
7 attorney behavior, but it talks also about court
8 exercising its control of the litigation of the
9 trial, of important pretrial hearings like we're
10 having here today, and talks about this is
11 especially true in lengthy high-stakes cases and
12 goes on to speak about what a court should and
13 should not tolerate when it comes to interruptions
14 and other matters that don't necessarily befit the
15 presentation of otherwise excellent counsel.

16 But what I was trying to communicate while we
17 were speaking over each other is that this is the
18 very reason why courts have spoken to the issue of
19 timely and reasonableness and preparation.

20 I can't speak to the matter in which this case
21 has been prepared by counsel for Mr. Epstein over
22 the last 3,000 and some odd days. I can, however,
23 speak to what is before me now. Why someone before
24 you and Miss Rockenbach got involved in this
25 case -- because I saw Mr. Ackerman's name in this

1 matter in the four years that I've been presiding
2 over this case -- I saw his involvement, I saw what
3 he attempted to do. His timing was critical --
4 whether his work was or wasn't is not for me to
5 say, but certainly his time in which he spent in
6 representing Mr. Epstein would have been critical
7 to any successor counsel's involvement in this
8 case.

9 Thankfully, for the purposes of most of the
10 decision-making that I do here in the civil circuit
11 courtroom I had experience, and I gained a
12 significant amount of experience in a relatively
13 quick amount of time. It was baptism by fire, I
14 think some would call it. But I had opportunities
15 to get into the courtroom long before others did
16 who had the same experience level. Whether that
17 was good or bad, the results speak for themselves.
18 But I did have that opportunity. And to learn a
19 great deal, not so much from those who I work with,
20 but even more those who I work against, so to
21 speak; my opposing counsel. The wealth of
22 knowledge that I gained from how they did their
23 work was astounding and something that I cherish
24 even to this day. But what it taught me more than
25 anything was that preparation is critical, whether

1 the case is a \$10,000 whiplash case or whether it's
2 a \$10 million class action suit.

3 And the very essence of what's being brought
4 to my attention today, where requests are made for
5 in-camera inspections at a time that's essentially
6 two to three business days prior to the
7 commencement of trial, a special master to review
8 thousands of documents several days before the
9 commencement of trial for the first time, despite
10 recalcitrance from Fowler White, their -- somebody
11 reviewing their files apparently for the first time
12 mere weeks before the case is going to court, those
13 types of things have to be held -- I was going to
14 say in high regard, but what was meant by what I'm
15 saying is preparation in getting to these
16 materials, there was nothing that I knew of despite
17 again what appears to be brief recalcitrance on the
18 part of Fowler White to turn over the materials
19 themselves, this could have been done six months
20 ago, a year ago, two years ago, three years ago,
21 four years ago, five years ago, six years ago, and
22 it should have been done then. To bring these
23 types of matters before the Court at this
24 particular time is, in my view, inappropriate.

25 Now, if this was newly-discovered evidence

1 that was not in the hands of Mr. Epstein's lawyers
2 since 2009, whenever this all came to fruition,
3 then I would say we'd have to take a different
4 approach. But the very nature of the documents
5 that we're talking about -- again, rightly or
6 wrongly held -- were in fact held by Fowler White,
7 Epstein's counsel, at an incredible crucial time in
8 this process; and that being in and around 2010,
9 when the Rothstein firm imploded, when these
10 e-mails were apparently confiscated, when somebody
11 made the decision that instead of Farmer paying for
12 the copy costs, they be handed over to Fowler
13 White. And if I have a bit of an incredulous tone
14 to that statement, it's probably purposeful.

15 But the fact remains, Mr. Link, that these
16 materials were in the hands of Epstein's attorneys
17 from the inception of the issue itself. And to now
18 come to the Court with not five pages of documents
19 to look at, but 27,000, or whatever that number
20 is -- it escapes me because of its shear mass -- is
21 impossible and is not going to be countenanced
22 here.

23 And I understand what you're going to tell me
24 because I've gotten a flavor for some of these
25 documents that have been provided.

1 MR. LINK: Yes, sir.

2 THE COURT: And that is that they are
3 detrimental to the position taken by Mr. Edwards
4 and that they are helpful to the position taken by
5 Mr. Epstein.

6 The issue, though, is one of whether the
7 protocol and the orderly administration of justice
8 is going to be forsaken notwithstanding also the
9 aspect of privilege and the sanctity of privileged
10 communications, whether all of those considerations
11 are going to be thrown out when balanced against
12 material that has been in the hands of
13 Mr. Epstein's lawyers from day one. And I, for
14 one, am not going to sacrifice protocol over what
15 may or may not be, number one, privileged, and if
16 not privileged, certainly late disclosed
17 documentation of a massive nature.

18 Should the amount of documentation be a
19 determinative factor in a court's analysis in this
20 context, based upon 35 years of compound
21 experience, bench and bar, and a little bit more
22 now than half on the bench, I do not believe that
23 the orderly administration of justice should be
24 countenanced and should be disruptive. Should be
25 disruptive.

1 And what I meant by that, should the
2 destruction of the orderly administration of
3 justice be countenanced? And the answer to that
4 question, in my respectful view, is no. Because if
5 I do it once, then I'm setting a precedent, even
6 though I know trial courts traditionally don't do
7 that, according to case law. And forgive me for my
8 choice of words, but as someone who is a senior
9 member now of the bench -- not a senior judge, but
10 a senior member of the bench -- that sends a
11 message to my colleagues that I'm not doing what I
12 believe is the appropriate thing.

13 MR. LINK: May I respond, your Honor?

14 THE COURT: Sure.

15 MR. LINK: First I want to apologize. I did
16 not mean to interrupt the Court when you were
17 speaking.

18 THE COURT: Not at all. Go ahead.

19 MR. LINK: Second, we're not talking about
20 27,000 pages, we're talking about 49 exhibits.
21 There are only 49 exhibits that we are asking the
22 Court to look at. So that it is not 27,000 pages.

23 Third, I think most importantly I absolutely
24 agree your Honor has a difficult, difficult
25 weighing decision to make between staying on course

1 and what I think is more important than any of
2 this, which is getting to the truth. And I believe
3 in my heart, your Honor, the reason I'm so
4 passionate about this and the reason I apologize
5 for interrupting you is if this courtroom is
6 looking for the truth, then those 49 documents have
7 got to come into court. They have got to go in
8 front of the jury.

9 THE COURT: But they're not coming in here,
10 and I would hope elsewhere, if it's going to be at
11 the sacrifice not only as to the orderly
12 administration of justice, but also in derogation
13 of a federal bankruptcy court's order or any court
14 of recognized jurisdiction's order that would have
15 the necessary supervisory control of a given
16 case, but also at the potential extermination or
17 derogation of a privilege. And for all of those
18 reasons is why I am extremely reluctant to start
19 taking these things into consideration just a few
20 days prior to trial.

21 Again, if this was something that came into
22 play that was being hidden by the other side, and
23 I'm talking now generically, and your side
24 discovered that information at the 11th hour, this
25 would be an entirely different discussion. And

1 that's one of the things I want to emphasize for
2 this record. But that's not the case.

3 As I mentioned -- and this is the last time
4 I'll say it -- these documents have been in the
5 possession of Mr. Epstein from the inception of
6 this case as we know it. They didn't move. And
7 the problems that are inherent in this analysis, of
8 which this Court simply does not have the time to
9 address prior to trial, are all of those reasons
10 that I have just described to you: The disruption
11 of the orderly administration of justice, the
12 sacrosanct nature of the privilege, and of even
13 more importance is what I said I wouldn't repeat;
14 and that is, that at all times material to the
15 analysis, from the inception Epstein lawyers had
16 this material. And, obviously, the timeliness, or
17 the abject untimeliness of the request for the
18 Court now to take these matters into consideration,
19 where they are well beyond when exhibits that were
20 known or should have been known were not listed.

21 MR. LINK: Your Honor, may I have one more
22 shot, please? I know you have been very patient
23 with me.

24 THE COURT: If it's going to be any different
25 than what you've told me. If it's going to be the

1 same, we've already established, and it's a matter
2 of record, and I have made my ruling accordingly.

3 MR. LINK: Yes, sir. I understand that. I'll
4 be very quick.

5 You asked about whether there was any hiding
6 of these documents. And one thing I want the Court
7 to see is this: These are -- Mr. Scarola didn't
8 want me to put that up on the screen, so I'll hand
9 it to you.

10 If you look at the privilege log which they
11 filed, which Judge Crow found inadequate -- and I
12 don't believe there was another privilege log
13 filed, so I don't think there's a privilege log --
14 but that's another day, another issue -- but if you
15 look at the privilege log and the e-mails that it
16 relates to, tell me if a lawyer looking at that
17 would be able to tell the real content of the
18 e-mails that Mr. Edwards was writing. Because I
19 think you have an obligation to disclose in a way
20 that allows a lawyer to make a determination of
21 whether it's privileged or not.

22 THE COURT: Mr. Link, you're making my point
23 for me. Mr. Ackerman, Fowler White, had these
24 materials ever since day one. I don't know how
25 much more I can make this clear.

1 As I said, the analysis would be completely
2 different if it was shown to me that somehow, some
3 way the Searcy, Denney firm, Mr. Edwards, Farmer
4 Jaffe -- I was going to say Ron Rothstein, but I
5 don't want to get him confused with the well-
6 respected coach and former coach of the Heat --
7 Scott Rothstein was sitting on this stuff. That's
8 not what happened here. That's the point that I'm
9 trying to drive home and emphasize. Is not only
10 the issue of timeliness, not only the issue of the
11 privilege has not been tested, but first and
12 foremost is the fact that Fowler White, Epstein's
13 own lawyers, have been sitting on this from day one
14 for seven, eight years.

15 MR. LINK: But we don't know -- the point I'm
16 trying to make, I don't know that they looked at
17 it.

18 THE COURT: That's not my problem.

19 MR. LINK: Maybe Carney gave it to them and
20 said, "Don't look."

21 THE COURT: That's not my problem. If
22 Mr. Epstein has a case against his attorneys, he
23 can deal with those claims to his satisfaction.
24 I'm not here to determine whether or not someone
25 did or did not commit malpractice.

1 MR. LINK: I understand that, Judge.

2 THE COURT: I'm here only to deal with this
3 issue that is before me; and that is, whether a
4 wholesale late disclosure of significant exhibits
5 that have been in the possession of Fowler White,
6 Epstein's attorneys, from day one and, thus, as a
7 matter of continuum in Epstein's possession, his
8 possession is constructive to the possession of the
9 attorneys that represented him, that string of
10 attorneys that have been representing him since
11 2010, and that if nobody got around to looking at
12 Fowler White's documents -- and how that could be
13 understood is beyond me, as not only a seasoned
14 attorney but also now a seasoned judge -- until you
15 and Miss Rockenbach took it upon yourselves and
16 your paralegal to do it is not my problem. And
17 that's all I'll say on the subject.

18 I have made my ruling. It is a several-
19 pronged ruling. And for the reasons that I've
20 stated, that's the reason why I am not going to
21 engage in some type of a last-minute evaluation of
22 documents that could have been evaluated from 2010
23 all the way to March of 2018.

24 But nobody ever took it upon themselves to
25 even look at those documents in Fowler White's

1 file. How that could be the case, who knows? But
2 I'm not finding fault with anything you or
3 Miss Rockenbach or Miss Campbell did. That's not
4 the issue. You've done your job.

5 MR. LINK: I understand. Your Honor, may I
6 have one minute to confer with appellate counsel to
7 make sure there's nothing I need to do to preserve
8 this?

9 THE COURT: Absolutely. Let's just take a
10 brief recess.

11 (Thereupon, a short recess was taken.)

12 - - -
13 THE COURT: All right. Thank you again.
14 Please have a seat. Welcome back.

15 MR. SCAROLA: Your Honor, I want to hopefully
16 tie up a few loose ends on the matter that has just
17 been ruled on.

18 Am I correct in understanding that the
19 defendant is prohibited from making any use of the
20 724 late-disclosed exhibits?

21 THE COURT: Yes.

22 MR. SCAROLA: Next, sir, we would request the
23 defendant be required to relinquish possession of
24 all copies of the privileged documents to the Court
25 under seal. They have expressed some concern

1 stating that we have asked them to destroy them.

2 We want them turned over to the Court under seal.

3 They should no longer have possession of those
4 until such time as somebody rules that they are
5 entitled to have possession.

6 And I want to make one brief comment about
7 that, if I could can.

8 Your Honor knows very well that Fowler White
9 is a very large law firm that keeps meticulous time
10 records with regard to the services that they
11 render. And the concept that it is impossible to
12 reconstruct through those time records what was
13 received, when it was received, when it was
14 reviewed, what happened with it, who was informed
15 of what was happening with it quite frankly is
16 absolutely inconceivable to me; that a law firm of
17 that size, keeping records the way it did, cannot
18 reconstruct what went on with regard to this
19 information.

20 THE COURT: And that's a good point. What I
21 was going to point out earlier and I failed to do
22 that, and I appreciate the reminder, is that I
23 would have expected certainly in deference to the
24 fact that Mr. Epstein was a client of Fowler White
25 that someone from Fowler White would have had the

1 ability to weigh in somehow as to these critical
2 issues.

3 Perhaps I'm being a bit naive when I say that
4 having served Mr. Epstein in their capacity as
5 counsel, it's my respectful belief that they owed
6 an obligation to Mr. Epstein, if not this Court, to
7 explain how and why they had access and kept these
8 records in their possession in light of that court
9 order and in light of this ongoing litigation. And
10 as a matter of respect to Mr. Epstein and his
11 ongoing legal team, to have made some type of
12 affirmative steps to have dealt with this issue
13 head on because of the apparent implications of
14 same.

15 So I again want to make clear that I'm finding
16 absolutely no fault with Mr. Link, Miss Rockenbach,
17 Miss Campbell or anyone else from the Link and
18 Rockenbach firm in terms of what they did, albeit
19 in the manner in which they had to do it and the
20 timing, unfortunately, of the matter from their
21 perspective in having to do it, but that takes
22 nothing away from what the Court has already
23 remarked upon concerning the fact that now Fowler
24 White in the representation of Mr. Epstein had
25 these records from the inception is one of the

1 reasons for the Court's ruling.

2 MR. SCAROLA: Your Honor, may we include in
3 the order a direction that opposing counsel is
4 required to relinquish possession of all copies of
5 the privileged documents to the Court under seal?

6 THE COURT: Well, the only thing that
7 obviously has to be taken into consideration is the
8 appellate rights of Mr. Epstein and how they're
9 going to preserve those rights in light of the fact
10 that the Court has rejected the last minute request
11 for in-camera inspection for the reasons that I've
12 already stated at length on the record.

13 MR. SCAROLA: Which is why I've suggested that
14 they be relinquished to the Court under seal, your
15 Honor. They can be given an exhibit number. To
16 the extent that the appellate court finds it
17 reasonable and necessary to examine those
18 documents, the appellate court will have the
19 opportunity to do that.

20 THE COURT: So you're suggesting to file with
21 the Clerk of Court under seal the documents at
22 issue?

23 MR. SCAROLA: Yes, sir, that's correct.

24 THE COURT: That's better stated.

25 Do you have any objection?

1 MS. ROCKENBACH: No objection, your Honor.

2 THE COURT: So stipulated.

3 MR. SCAROLA: Your Honor will recall that
4 opposing counsel has also informed the Court on
5 multiple occasions that backup in the preparation
6 for this case was being provided by the Gunster law
7 firm, and we would like a certification from them
8 as well that no copies have been retained.

9 MR. LINK: They don't have any, Judge.

10 THE COURT: Okay. That's fine. If Mr. Link
11 and Miss Rockenbach are representing that to the
12 Court, I'm satisfied with that representation.

13 MR. SCAROLA: And I accept that representation
14 as well, your Honor, but what we would like and
15 believe we are entitled to is a list of all persons
16 to whom the privileged documents have been
17 disseminated. And I'm particularly concerned in
18 this regard; that the testimony of any witness
19 might be influenced by their improper exposure to
20 privileged documents. So we ask that a complete
21 list of all persons to whom those documents have
22 been disseminated or the contents of the documents
23 that been disseminated be provided to us.

24 And I know that Mr. Cassell has some concerns
25 in that regard as well that he would like to

1 address with the Court. So if he may have an
2 opportunity to speak to the Court in this regard --

3 THE COURT: That's fine.

4 Mr. Link, if you want to comment on that?

5 MR. LINK: Yeah. I think I can solve that
6 problem very easily, your Honor.

7 The documents were within my law firm, and my
8 client. That's it. They haven't been shown to any
9 third parties. There's not a third-party witness
10 for me to put on the stand. And you have ruled we
11 can't use them. We won't use them.

12 MR. SCAROLA: Does that include Mr. Epstein?

13 THE COURT: Does what include Mr. Epstein?

14 MR. SCAROLA: Has Mr. Epstein been provided
15 with copies of the documents or the contents of
16 these privileged documents?

17 MR. LINK: I just said my client. My law firm
18 and my client. And I can say legal counsel,
19 Mr. Goldberger. So that's it.

20 MR. SCAROLA: That may require some further
21 relief that we can address at another time.

22 And so that the record is clear, your Honor,
23 we believe that sanctionable conduct has occurred,
24 and we are reserving the right at a later time --
25 but it's not something that needs to be addressed

1 now -- but we're reserving the right to address the
2 issue of appropriate sanctions at a later time.

3 THE COURT: Thank you.

4 Mr. Cassell?

5 MR. CASSELL: Thank you, your Honor. Paul
6 Cassell, and I'm here this afternoon, and I
7 understand it's getting late in the day, I'll be
8 very brief, representing three victims; LM, EW and
9 Jane Doe. Just one housekeeping matter.

10 We have filed a motion to intervene, which is
11 unopposed.

12 THE COURT: The only thing I need is an order.
13 Everything else was provided but the proposed
14 order. So if it's unopposed, then phrase it as
15 such and I'll be glad to execute it.

16 MR. CASSELL: Thank you, your Honor.

17 Just so the record is clear, on July 19, 2010,
18 seven and a half years ago, LM said these very
19 documents are privileged, and on February 23, 2011,
20 EW and Jane Doe through counsel said these
21 documents are privileged. So the Epstein entity
22 that is Mr. Epstein and his array of lawyers were
23 on notice at that time that every one of these 45
24 documents was privileged.

25 And then what happened on Friday night, March

1 2nd, was that Mr. Link put into the public court
2 file summaries of the e-mails, quoting from them
3 directly, and we believe that was improper. And
4 indeed, we've heard today Mr. Link represent to the
5 Court all we wanted was an in-camera review, but of
6 course they wanted something more. They wanted to
7 put those in the public court file because they
8 knew than the cat would be out of the bag,
9 publicity would ensue, and other damage to my
10 clients could occur. And so I'm here this
11 afternoon to raise what I think are time of the
12 essence concerns about the release of those
13 privileged materials by Mr. Epstein. When I use
14 the term "Mr. Epstein," I'll be referring to this
15 entity.

16 Let's be clear. There is no doubt from sworn
17 testimony in front of the Court that on January 10,
18 2018 agents of this law firm picked up a disk from
19 the Fowler White law firm, and the Fowler White law
20 firm, as you know from the ELMO, had been directed
21 some six or seven years earlier not to retain any
22 copies of these documents. So there should be no
23 dispute about the circumstances right now.

24 At that time Mr. Link's law firm, Mr. Epstein,
25 were in possession of documents that Fowler White

1 was in possession of that were in violation of a
2 court order. Mr. Scarola has used the term "stolen
3 documents" and I think that, frankly, describes
4 accurately the nature of the documents, although
5 who the thief was, of course, remains to be
6 determined.

7 So the question in front of you right now is
8 what to do about this. Well, we know one thing.
9 We know there's been absolutely no waiver of
10 attorney/client privilege. How do we know that?
11 Well, your Honor knows the Florida law very well.
12 To be a waiver of attorney/client privilege is
13 something that is disfavored. There has to be a
14 clear, intentional waiver of the privilege. And
15 how do we know there's not been a clear,
16 intentional waiver of the privilege? Just use
17 Mr. Link's word. Things are clear as mud. Well,
18 if something is clear as mud, there cannot be an
19 intentional waiver. So there's no waiver of
20 attorney/client privilege.

21 I know the hour is late.

22 THE COURT: You don't have to feel rushed. I
23 want to make sure that you're heard and that your
24 clients are heard.

25 MR. CASSELL: Thank you, your Honor. We

1 appreciate that because what we've heard shockingly
2 this afternoon is -- let me -- I know we need to be
3 careful with language -- let's just say an accused
4 abuser, Mr. Epstein, the man accused of abusing my
5 three clients, we are told has seen these very
6 privileged documents. We're told Mr. Goldberger
7 has seen them. We're told, of course, Mr. Link and
8 his law firm has seen them. And of course this
9 very large law firm, the Fowler White law firm, has
10 seen them as well. And so the question is what do
11 we do?

12 And we're mindful in the fact you're about to
13 embark on what's likely to be a very time-consuming
14 trial. So I would like to impose six remedies that
15 we would ask you to execute today; none of which, I
16 want to emphasize, will require consumption of the
17 Court's time other than signing the proposed order
18 that we will provide for you.

19 The first is -- Mr. Scarola has already asked
20 for this and I believe obtained this, but I want
21 the record to be clear. My clients are asking that
22 you preclude any use of the privileged exhibits
23 either directly, indirectly or derivatively during
24 the upcoming trial because if someone relies on
25 this information, for example, in asking a question

1 to Mr. Edwards or asking a question to any of the
2 witnesses that Mr. Edwards is presenting, that
3 could implicitly reveal privileged information.

4 THE COURT: We have all done this, so don't
5 feel like you're alone. Are you talking about Mr.
6 Epstein?

7 MR. CASSELL: I'm sorry. If Mr. Epstein's
8 attorneys do that, that's the concern.

9 So, for example, if they're formulating any
10 questions to Mr. Edwards, they shouldn't be able to
11 use any privileged information because we're
12 worried that that could implicitly disclose
13 privileged communications.

14 Secondly, we would like Epstein counsel -- and
15 that's a broad term that includes -- I've probably
16 lost track of the different law firms, but
17 Mr. Link's law firm, the Fowler White law firm, I
18 believe there are several others, Mr. Goldberger's
19 law firm, we want them all to canvass their
20 records, canvass their e-mails, canvass their
21 servers and tell us if they -- how did this happen?
22 How did this happen?

23 THE COURT: You're talking about how did the
24 Fowler White firm garner these records?

25 MR. CASSELL: Correct.

1 THE COURT: Well, I'm not sure that any of
2 their servers are going to shed light on that.

3 MR. CASSELL: Well, it may be, for example --

4 THE COURT: I don't want to go on a fishing
5 expedition, as you can appreciate. I don't want to
6 exacerbate the problem; meaning, I don't want to
7 unnecessarily delve into myriad e-mail systems to
8 gain knowledge that is likely residing at the
9 Fowler White firm in some form or fashion, whether
10 it be current or former employees or otherwise. So
11 I am not going to go to that extent at this
12 juncture without further proof or basic proof for
13 going in that direction.

14 MR. CASSELL: That would be our request. But
15 there would be a broad -- you phrased it fishing
16 expedition. We would phrase it a retrieval
17 expedition -- to retrieve what's happened here.

18 But at the minimum we would ask your Honor then to
19 direct Epstein attorneys who were previously before
20 this Court, Fowler White, to examine the
21 circumstances here.

22 You noted that you thought there might have
23 been an obligation for them to address the Court
24 head on. I'm here telling you that the victims
25 believe they, Fowler White, has an obligation to

1 address the victims head on. How did this happen?

2 THE COURT: And understandable. I was not
3 confining the obligation of Fowler White to those
4 entities that I mentioned. It was those entities
5 that came to the Court's mind initially. I don't
6 want this record to suggest I wasn't taking into
7 account the concerns of the victims.

8 MR. CASSELL: Certainly, your Honor, I wasn't
9 suggesting -- and this, of course, is my first
10 opportunity -- you have always referred to building
11 a record -- this is my opportunity to build a
12 record as well. So we want to know how these
13 materials were obtained.

14 The third thing we want to know is who were
15 the materials distributed to? Mr. Scarola has made
16 that request on behalf of his clients. I'm making
17 that request on behalf of my clients.

18 We're told that Mr. Goldberger has seen it,
19 we're told Mr. Epstein has seen it. We want to
20 know who else has seen it. And this, frankly, may
21 require looking at e-mails, looking at servers and
22 that sort of thing.

23 I think the record should be clear that in a
24 routine case, you might say, "Well, that's going to
25 be too expensive." Your Honor is aware this is not

1 a routine case because I understand that two of the
2 finest and largest law firms here in Florida are
3 currently representing Mr. Epstein, so they
4 certainly have the resources to search -- to
5 accomplish the searches that would be involved to
6 see how these materials got anywhere.

7 The fourth thing is we want an order directing
8 Mr. Epstein not to reveal the contents of this
9 information to anyone. We are told that
10 Mr. Epstein has seen the information, so he should
11 be singled out specifically for an order.

12 Fifth -- I think this has already been
13 recovered. All copies of the documents are to be
14 turned over under seal to the Court.

15 Sixth, we want our temporary sealing order,
16 which we will provide later today, to be converted
17 into a permanent sealing order. Mr. Link filed in
18 the public court file, we believe highly
19 improperly, information that he was on notice was
20 privileged. And he said today he wanted an
21 in-camera review. Well, you do not get an
22 in-camera review when you put those very documents,
23 or at least summaries of those very documents, into
24 the public court file.

25 We want the Friday night filing, the notice of

1 redacted materials, to be placed under permanent
2 seal.

3 And then the last request is just a
4 housekeeping request. We're obviously scrambling
5 to sort out the implications of all this. I'm sure
6 I have missed some points that need to be made.

7 Due to the late filing of this document, due to the
8 public filing of the document improperly, we would
9 like leave to be able to file a supplemental
10 application for additional remedies after the trial
11 concludes and after we have received information
12 about how the documents were obtained and who they
13 went to.

14 And so those are the requests that I make on
15 behalf of my two clients.

16 THE COURT: All right.

17 Mr. Link?

18 MR. LINK: Yes, sir. Thank you.

19 THE COURT: Thank you.

20 MR. LINK: I'm not sure how I can be more
21 clear about where we got the documents from. We
22 got them from Fowler White, your Honor. I don't
23 think that's a mystery anymore.

24 I've represented to the Court who I have
25 shared the papers with. The Court has ruled that

1 we're going to take the disks that we have and put
2 it under seal. We'll destroy all the other copies.

3 That's what Mr. Scarola asked for and that's what
4 we said we would do.

5 As to the filing, I never said all I wanted
6 was an in-camera inspection. What I said was
7 Mr. Scarola said he would like one and I said
8 great, let's have one.

9 Most important is this: The documents that we
10 filed -- and there was some miscommunication with
11 Mr. Cassell -- I want to make sure the record is
12 clear -- we did two things: We filed redacted
13 documents. We redacted all of the names of EW, LM
14 and Jane Doe, as this Court has instructed. So
15 their initials were wiped out. Mr. Cassell called
16 me and said, "I'm looking at a document and I see
17 their initials." What he was looking at is we
18 served the counsel and hand delivered to the
19 Court -- did not put it in the public file -- the
20 unredacted documents so we would all know what was
21 in there.

22 THE COURT: By the court, you mean --

23 MR. LINK: To you. To the judge.

24 THE COURT: -- to myself.

25 MR. LINK: Yes, sir.

1 THE COURT: Not as far as the court file is
2 concerned.

3 MR. LINK: The court file only contains the
4 redacted version. We have double checked that. I
5 asked Mr. Cassell to tell me if I missed a
6 redaction. Could it happen? Yes, it could happen.
7 We haven't found one. If there was one that wasn't
8 redacted, we'd be glad to redact it. But the only
9 thing that was filed in the clerk file was the
10 redacted version.

11 Thank you, Judge.

12 THE COURT: All right. Thank you.

13 Much of which -- or much of the relief that
14 has been requested has essentially been taken care
15 of I believe through the Court's prior order; that
16 is, that the one disk containing the documents that
17 are being sought to be introduced at trial to take
18 to record will be permitted to be filed under seal.
19 The sanitized redacted versions of those records
20 I'm also ordering to be sealed in an abundance of
21 caution just in case there may be some error, not
22 intentional, on the part of counsel who filed those
23 records.

24 Mr. Epstein will be barred from referring to
25 any of those records as it relates to the documents

1 that were gathered from Fowler White or from any
2 other source that would have included those records
3 that were the subject of Judge Ray's order. So
4 it's to preclude anything coming in through the
5 back door which wouldn't be allowed through the
6 front.

7 Mr. Link, did you want to comment on this?

8 MR. LINK: Yes. I wanted to remind the Court
9 we have over a hundred exhibits that were listed on
10 that disk that are already in the court file.
11 We've used them in depositions. So I'm
12 wondering -- those aren't excluded.

13 THE COURT: Right. I'm not talking about
14 those. I'm talking about the ones that have been
15 derived from Fowler White and that have been sought
16 to be introduced as part of the 748 or 724, or
17 whatever this number is, or the 45 that have been
18 claimed as privileged and have not been ruled upon
19 and will not be ruled upon prior to trial because
20 of the reasons that I have explained in detail
21 earlier.

22 MR. LINK: Thank you, Judge.

23 THE COURT: Mr. Cassell, did I leave out
24 anything else?

25 MR. CASSELL: Yes. We want to know how the

1 Epstein entities came into possession of the
2 documents, and then we want to know where they
3 went.

4 THE COURT: Because of the court ruling, I
5 don't find that to be a front burner issue at this
6 time. Please don't confuse anyone here. The
7 Court's reference to front burner as opposed to
8 being an issue of importance. Front burner simply
9 means that in preparation for a trial that is
10 actually a mere two to three business days away, if
11 you count tomorrow, which I don't really count as a
12 court business day because of my obligations to the
13 Bench Bar Conference, I won't have the opportunity
14 to really delve into that prior to trial.

15 And as Mr. Scarola pointed out, I believe,
16 earlier, that can be done at another time. So I am
17 certainly not going to forget that it needs to be
18 done. But it will be ordered that it be done post
19 trial.

20 Any other remedies that are sought as you go
21 along -- I understand the relative late nature of
22 these revelations; hence, you are not precluded
23 from filing a supplemental motion.

24 I also note that you have requested attorney's
25 fees and costs related to this endeavor, and I'm

1 reserving on that as well.

2 MR. CASSELL: But related to that is the
3 distribution. The cat is now wandering out of the
4 bag, so time is of the essence.

5 THE COURT: Right. And again, I think that in
6 an abundance of caution, and I understand your
7 concerns, but what the attorneys here recognize --
8 and Mr. Epstein is also under this order -- is that
9 no further dissemination is going to be made. I
10 think that goes without saying as far as the
11 attorneys are concerned. I've known each of them
12 seated at counsel table for many years, as I have
13 known Mr. Scarola and Miss Terry, Mr. Burlington,
14 and I think they recognize that when this Court
15 makes a statement, that it is abundantly clear that
16 it will be enforced to the letter. I have no doubt
17 in my mind that they will all be respectful of the
18 court order of non-dissemination of any of those
19 documents hence forth.

20 And Mr. Link has already represented to the
21 Court that other than Mr. Epstein and his
22 co-counsel, that there have been no eyes laid upon
23 these documents. Hence, I'm accepting that
24 representation, as Mr. Scarola has accepted those
25 representations during the hearing as well.

1 MR. CASSELL: We haven't heard, of course,
2 from Fowler White. Will the Court direct them to
3 make similar representations?

4 THE COURT: I believe that I have sufficient
5 authority to do that under these relatively
6 peculiar circumstances. My jurisdiction, though,
7 is somewhat limited because they have withdrawn
8 from the case.

9 As a general blanket order I would simply say
10 that all attorneys who have or are representing Mr.
11 Epstein shall be subject to this order of
12 confidentiality, of sealing and of non-
13 dissemination of any such information that is
14 contemplated in any of the documents that are part
15 of the umbrella order of Judge Ray. And that would
16 include all of the exhibits that we spoke about
17 today and that have been filed as a matter of
18 record.

19 MR. CASSELL: Could they also be directed to
20 make a representation as to who they have
21 distributed the documents to?

22 THE COURT: Mr. Link has already -- are you
23 talking about Fowler White?

24 MR. CASSELL: Fowler White.

25 THE COURT: I don't think that I have that

1 ability.

2 MR. CASSELL: Could I be heard on that issue
3 then? I believe that you do have -- all right.
4 We'll deal with that later then, your Honor.

5 MR. LINK: Can I make a suggestion, your
6 Honor, that might be helpful?

7 THE COURT: Sure.

8 MR. LINK: We now have, I think, 34 or 36
9 boxes they delivered; I believe all the boxes they
10 have. The disk, the original disk, we now have it.
11 I don't know for sure, but I doubt that there's
12 another disk that they made and kept. If the Court
13 will instruct as part of this order that we
14 maintain the boxes, because Fowler White wanted
15 them back, then we will take possession of the
16 boxes.

17 THE COURT: If you are telling me that you
18 have authority from Mr. Epstein to retain those
19 boxes and Mr. Epstein is essentially giving you
20 carte blanche, you and Miss Rockenbach and
21 Mr. Goldberger jointly, the authority to make any
22 decisions necessary to protect his interests, that
23 motion would be granted.

24 MR. LINK: I'm standing here with this puzzled
25 look because I'm not sure what that means, frankly.

1 All I was trying to do is say I will preserve the
2 documents, the original files, because I don't
3 think there's another set of files somewhere.

4 Fowler White had asked me to return them once we
5 went through them, and if the Court can instruct me
6 to hold the boxes, then I will do that.

7 THE COURT: I don't have a problem with making
8 that instruction, so I'll leave it at that. You're
9 speaking on behalf of your client, Mr. Epstein, as
10 well as your own law firm, and Mr. Goldberger, I
11 take it, as well, so I have no problem making -- in
12 entering this order since you're current counsel
13 for Mr. Epstein.

14 MR. LINK: Thank you, Judge. I think that
15 will make custody easier.

16 MR. SCAROLA: Your Honor, there are two
17 additional matters that I would hope can be
18 disposed of in advance of the start of trial.

19 THE COURT: Sure.

20 MR. SCAROLA: One is Mr. Epstein's motion to
21 strike Dr. Jansen, and the second is issues with
22 regard to adverse inference. I think that both of
23 those matters have been fully briefed.

24 Mr. Burlington is here to present argument in
25 response to the motion regarding Dr. Jansen.

1 I suggest -- your Honor has told us that we're
2 finishing at 4:30 today -- that we allot 15
3 minutes, seven and a half minutes per side, to each
4 of those matters.

5 THE COURT: All right. Off the record.

6 (Discussion held off the record.)

7 MR. LINK: Your Honor, we have a motion to
8 strike the 79 exhibits that they disclosed late
9 after the cutoff. I think if we're going to do a
10 goose and a gander, the Court should rule those
11 exhibits are stricken.

12 THE COURT: Well, I have to -- I want to
13 review that motion again since my concentration has
14 been on the sequencing that I mentioned before.
15 I'll be glad to deal with it prior to trial.

16 MR. LINK: I'm comfortable with your Honor
17 ruling on the papers if Mr. Scarola is.

18 THE COURT: Well, I'd rather, since it's
19 something of the magnitude of trial exhibits and 79
20 in number, I'd rather have argument on the subject,
21 to be perfectly frank with you. I appreciate your
22 willingness to entrust the Court with that
23 endeavor, but I think it's better to have you heard
24 on the record.

25 All right. Mr. Burlington, which one did you

1 want to tackle first?

2 MR. BURLINGTON: Your Honor, it's his motion.

3 MR. SCAROLA: The motion to strike Dr. Jansen.

4 THE COURT: All right.

5 MR. BURLINGTON: Unless you want me to argue
6 both sides, your Honor.

7 THE COURT: What's the other motion?

8 MR. SCAROLA: Adverse interest, your Honor,
9 from the assertion of the Fifth Amendment.

10 MR. LINK: Which one are we on?

11 MS. TERRY: Jansen.

12 MR. LINK: Jansen. Okay.

13 Good afternoon, your Honor. See if I can
14 start over today.

15 THE COURT: You have done fine.

16 MR. LINK: I don't remember winning one yet,
17 so maybe this one. I have hopes.

18 Your Honor, this is our motion to strike
19 Dr. Jansen. And I know the Court has read the
20 paper, so I'm going to be very brief about this.

21 We have struggled since coming before this
22 Court in December with what this case is, because I
23 keep saying to the Court that Mr. Edwards wants to
24 try a defamation action, he wants to clear his
25 name, he wants defamation-type damages, and the

1 Court keeps rebuking me properly and saying, no,
2 this is a malicious prosecution action. We're not
3 going to try a defamation action.

4 Their expert that they want to put on the
5 stand for damages has no opinion, your Honor, as to
6 damages. Not one. He can't talk about any damage
7 suffered by Mr. Edwards, if any. His sole opinion
8 is that he was given defamatory statements by
9 counsel, defamatory statements, and told to do a
10 search to see how many times the defamatory
11 statements hit a web page or how many people
12 touched the web page with the defamatory statement
13 on it.

14 So, for example, there's a newspaper article
15 that says Rothstein and Edwards, and that magazine
16 or that newspaper has 3,000 people that look at the
17 newspaper. He says there are 3,000 hits. He can't
18 tell you if one of the 3,000 people read the
19 article, what they thought about the article, did
20 it make any difference, did they change their view
21 of Mr. Edwards, did they not do business with him,
22 did they fire him?

23 He says he has no economic damages, so how
24 does it help a jury to hear about nine million web
25 hits when you can't point to a single person -- I

1 said, "Tell me one person, one person, Dr. Jansen,
2 that you know read one of these articles." He
3 said, "I can't. I have no idea."

4 The other thing that was important is he said,
5 "I just use an average of data. I can't tell you
6 exactly because they accumulated over months." He
7 can't even tell us how many times this article was
8 actually touched. All he can tell you is if I go
9 to the Palm Beach Shiny Sheet website, on an
10 average month 3,000 people look at it. So how can
11 that help the jury from a damages expert determine
12 whether the filing of this malicious prosecution
13 action caused Mr. Edwards any damage?

14 Thank you, Judge.

15 THE COURT: All right. Thank you.

16 Mr. Burlington?

17 MR. BURLINGTON: I'm Phil Burlington, here on
18 behalf of Brad Edwards.

19 This determination comes down to four
20 questions. First, is the expert qualified? That's
21 not being challenged.

22 The suggestion that he cannot give opinions on
23 damages ignores the nature of the damages for which
24 case law is clear, which includes reputational
25 damages, shame and humiliation. They have

1 acknowledged shame and humiliation as an element of
2 damage. We've cited on page 6 of our response
3 five Florida cases. Two of them, Florida Supreme
4 Court cases, make it very clear reputational
5 damages are a valid element of a malicious
6 prosecution case.

7 So how do you monetize -- how does the jury
8 monetize the damage that has been suffered by my
9 client? We've cited cases, and there are cases we
10 rely on from outside the jurisdiction, but it's
11 clear from the many Florida cases we cite this all
12 arises from the common law, and malicious
13 prosecution is described many times as an ancient
14 cause of action, so it's all developed by the
15 common law. So reliance on foreign jurisdictions
16 is not unusual, especially when it's consistent
17 with Florida law.

18 But the clearest discussion is in a case
19 called Browning, which says that in reputational
20 damages, which are particularly hard to prove, and
21 there's no case that I've ever read where in a
22 malicious prosecution case a plaintiff was put to
23 the burden of bringing in an individual who said,
24 "I didn't send my case to this lawyer because I
25 heard he was accused of a crime." That, of course,

1 would require, of course, months of trial to pull
2 people in. But that's not our burden.

3 THE COURT: Right. And we're not looking at a
4 defamation case from the standpoint of publication,
5 where publication is really part of it. So that's
6 not what is being sought here in terms of the
7 expert testimony, as I understand it.

8 MR. BURLINGTON: Well, we're seeking to prove
9 the dissemination, as we would in a defamation
10 case.

11 THE COURT: Well, dissemination and recognized
12 or acknowledged publications are two different
13 things is what I'm trying to say. I'm essentially
14 agreeing with you, I think, in the sense that
15 there's no need to prove publication.

16 When I say "publication," I'm talking about
17 the consumption of that information by another
18 party and that party's -- and the effect on that
19 listener, or the effect on the person who agreed
20 with that material. You're speaking only to the
21 issue of dissemination.

22 MR. BURLINGTON: The Browning case says that
23 the two primary factors in determining reputational
24 damages are the gravity of the false allegations --
25 and here we have a young, talented trial lawyer who

1 is being accused not only of heinous crimes, but
2 heinous crimes involving undermining the judicial
3 system. And then the second factor noted in
4 Browning, and it's cited in other cases, is the
5 degree of exposure of the false allegations.

6 And I've cited multiple cases in my brief that
7 say that when courts have evaluated the
8 excessiveness of a malicious prosecution award, one
9 of the critical considerations is the degree of
10 exposure of the false allegations. And this is how
11 we are doing it in the Internet age.

12 If we were 30, 40 years ago and this was done
13 and let's say it was only exposed in this area of
14 the country, Palm Beach County, Broward, Miami, we
15 would come in with the newspaper's circulation to
16 give the jury some idea of the exposure. That
17 doesn't really have much probative value in the
18 Internet age.

19 And Dr. Jansen is undisputedly qualified,
20 probably more than anybody, to do this, and he
21 explained how conservative his analysis was. And
22 he's not going to tell the jury that the nine
23 million six hundred hits means that nine million
24 six hundred thousand people read this story and now
25 believed that Brad Edwards is a criminal, and so

1 forth and so on.

2 And one of the factors here is a very well-
3 recognized principle of the Bigelow case, which is
4 a U.S. Supreme Court case, that says that one of
5 the fundamental principles of justice is that if a
6 defendant engages in wrongful conduct that creates
7 uncertainty as to damages, that falls on them. You
8 can't put the plaintiff to what is an essentially
9 impossible burden, assuming we prove our cause of
10 action. And that, of course, is an issue that this
11 trial will be all about.

12 But they're trying to say really you can never
13 prove reputational damages without bringing in Joe
14 Six Pack off the street and inquiring of him how
15 much of a grudge he's holding against Brad Edwards
16 because of false allegations. That is simply not
17 the standard.

18 Is it helpful to the jury? Well, the jury is
19 not going to understand the complexity of
20 dissemination of information on the Internet, and
21 this witness is specifically qualified to do that.

22 So when we go through the analysis is he
23 qualified, is the issue relevant, is it helpful to
24 the jury, we satisfy those three.

25 Then we come to reasons to exclude. And the

1 only reason I saw raised in their motion for
2 excluding it was vague references to confusion.
3 And I don't see how there could be confusion, given
4 the clear parameters of what Dr. Jansen testified
5 to were his directions, his methodology. There was
6 terminology that he has to explain to the jury, but
7 all experts do that in complex situations. The
8 jury here would not be capable of making an
9 analysis of the degree of dissemination on the
10 Internet as a matter of their common sense.

11 THE COURT: I didn't read the motion as
12 suggesting a prior Daubert analysis being required.

13 MR. BURLINGTON: I'm sorry?

14 THE COURT: I didn't read the motion filed by
15 Mr. Link to talk about his seeking a Frye or
16 Daubert analysis.

17 MR. BURLINGTON: Correct. That's my reading
18 as well, your Honor.

19 Now, there was a little preamble, as there has
20 been on many motions here, about how this is all
21 about a defamation action, and we've cited in our
22 response the term "defamation" is a general term in
23 the English language, and we've cited Miriam
24 Webster, which is about as white bread as you can
25 get on a definition.

1 The fact that that term is used not only in
2 describing certain parts of the task that was
3 assigned to Dr. Jansen or in our argument regarding
4 the nature of the damages, it's because that term
5 properly applies to false statements of fact that
6 accuse a person of criminal conduct, of being
7 insane, being untrustworthy and so forth. It is
8 not in any way a suggestion that we are bringing a
9 defamation action.

10 The reputational damages are clearly
11 recognized by the Florida Supreme Court. They have
12 been recognized as one of those intangible damages
13 for which a jury has to be given broad discretion.
14 On the other hand, they have to be given
15 parameters. And in this context, the two primary
16 ones as to reputational damages are the gravity of
17 the false allegations and the degree of exposure.
18 And that is exactly what this expert is qualified
19 to testify about. And there's been no suggestion
20 as to what confusion there would be. And so,
21 therefore, we believe we have satisfied the
22 standard, and it's your discretion regarding the
23 admission of his testimony.

24 And to strike a witness entirely is the most
25 extreme remedy that could be sought in this

1 context, and we submit it is not appropriate and
2 the motion should be denied.

3 THE COURT: All right, thank you.

4 Mr. Link, you have a few minutes to rebut.

5 MR. LINK: Very briefly, Judge.

6 I think a little bit of the confusion on the
7 damages is there's really two standards. The
8 standard for damages in a malicious prosecution
9 based on lack of probable cause in a criminal
10 action has per se damages. They're assumed,
11 because if somebody makes an allegations that you
12 are a criminal in the criminal court and they have
13 you arrested, then your reputation and your
14 character are immediately impugned.

15 This is civil. In civil it requires damages
16 proximately caused. And it's not a Frye analysis,
17 it's not a Daubert analysis, it's a basic does this
18 help the jury and is it a 403 issue, which is if I
19 get on the stand and I say there were nine million
20 hits when in fact all he did was search for
21 defamatory terms given to him by counsel without
22 taking into consideration was it Mr. Edwards who
23 spoke to the press, did he do a press release, when
24 did these -- when were the -- when did the
25 dissemination take place, did anybody read them,

1 did it make any difference?

2 One of the things Mr. Edwards has told us is
3 he has no economic damages. His law firm has made
4 substantially more money, or himself personally,
5 since Mr. Epstein sued him than from before.

6 So to say to the jury nine million hits sounds
7 like nine million people are reading this. I
8 believe that prejudice outweighs any, any value it
9 might have, any relevance in this action, because
10 he needs to show damages proximately caused and not
11 just put someone on the stand to talk about hits.

12 Thank you, Judge.

13 THE COURT: Okay. I was writing as we were
14 speaking and certainly was anticipating
15 Mr. Burlington to state the well-known legal action
16 that a request to strike a witness is a drastic and
17 extreme measure reserved only in rare
18 circumstances, especially where here we're dealing
19 with an expert which is otherwise qualified to
20 testify to what he's going to testify. And there
21 being no Daubert or Frye analysis necessary, the
22 Court would deny the motion.

23 I would point out that many of the issues that
24 were raised by Mr. Link both in his written motion
25 and orally certainly can be effectively dealt with

1 on cross-examination. But the core aspect of the
2 Court's ruling today is that reputational damages
3 and damages for humiliation are difficult to
4 demonstrate to a jury, and the manner in which the
5 plaintiff chooses to go about presenting that
6 testimony, in this Court's view, is reasonable in
7 part to Dr. Jansen's proposed testimony. So again,
8 that motion is respectfully denied.

9 The next issue.

10 MR. LINK: Judge, I think that's 0 for 5.

11 THE COURT: I don't keep score. Never have
12 and never will. I know you say it in gest, and I
13 allowed it the last time without a mention, but
14 repeating it is inappropriate.

15 MR. LINK: Judge, I'm sorry. It was not meant
16 to be inappropriate.

17 MR. SCAROLA: Your Honor, the next issue
18 before the Court relates to the plaintiff's
19 entitlement to an adverse inference instruction
20 arising out of each of those circumstances where
21 Jeffrey Epstein has asserted his Fifth Amendment
22 right to remain silent. The primary objection to
23 the entitlement to an instruction really related to
24 the content of the instruction.

25 And I have handed your Honor the adverse

1 inference instruction based on Fifth Amendment
2 assertions that we are requesting of the Court,
3 which I suggest to your Honor is in direct
4 conformity with the United States Supreme Court's
5 opinion in Baxter versus Palmigiano and also
6 conforms with the clarification in the case of
7 Coquina Investments versus Rothstein.
8 Interestingly, a matter related to the Ponzi
9 scheme.

10 And those two cases together stand for the
11 basic principle that you may not base civil
12 liability solely upon the assertion of a Fifth
13 Amendment privilege. But if a defendant confronted
14 with evidence against him in the context of a civil
15 case refuses to answer questions that are relevant
16 and material to that civil case, then drawing an
17 adverse inference based upon Fifth Amendment
18 assertion is not required, but is permitted.
19 That's exactly what this instruction says.

20 Your Honor is well aware of the broad array of
21 questions to which Mr. Epstein has refused to
22 provide answers, and it is of particular
23 significance that those refusals occurred in the
24 context of efforts to obtain discovery on the claim
25 that Mr. Epstein himself asserted.

1 He filed a lawsuit intending not to provide
2 any discovery with respect to the claims that he
3 made and, carrying through on that intention,
4 refusing to provide any discovery on those claims
5 that he made. Under those circumstances, an
6 adverse inference instruction is particularly
7 appropriate.

8 I might also point out to the Court that there
9 is a basic principle of law relating to admission
10 by silence. Separate and apart from Fifth
11 Amendment concerns, if someone is confronted with
12 accusations under circumstances where they have in
13 this case not only a right but an obligation to
14 speak up in response to those accusations and they
15 fail to say anything, that accounts to an admission
16 by silence.

17 So based upon those two very fundamental
18 principles, the U.S. Supreme Court recognition, the
19 Fifth Amendment protections do not apply in the
20 context of civil litigation based upon the basic
21 principle of admissions against silence, admission
22 of a party opponent by silence.

23 We ask the Court approve this proposed
24 instruction and permit us to comment upon
25 Mr. Epstein's assertion of the Fifth Amendment

privilege in the context of this civil litigation in each context in which those assertions were made.

4 So it relates to his assertion of the Fifth
5 Amendment privilege with regard to the elements of
6 the claim that he brought against Bradley Edwards,
7 it relates to his assertion of Fifth Amendment
8 privilege with regard to all questions relating to
9 his economic circumstances, it relates to his
10 assertion of the Fifth Amendment privilege in every
11 context in which he has asserted that privilege.

12 | Thank you, sir.

13 THE COURT: Thank you.

14 Mr. Scarola, the reference to Florida standard
15 jury instruction 301.11, am I going to find this
16 there?

17 MR. SCAROLA: What you're going to find there,
18 your Honor, is a spoliation instruction. And what
19 we've done is we have adopted the spoliation
20 instruction, which is the closest standard in
21 jury -- closest standard jury instruction to these
22 circumstances. That is not an adverse inference
23 instruction based upon Fifth Amendment. No such
24 standard jury instruction exists.

25 | THE COURT: Well, I didn't think so. And

1 thank you for that clarification.

2 I'm surprised that there really aren't more
3 cases that deal with this instruction in a civil
4 context. And no Florida cases that you're aware
5 of?

6 MR. SCAROLA: Coquina is a Florida case, your
7 Honor.

8 THE COURT: Well, it's a Federal District
9 Court case, not a Florida appellate court case,
10 which would be binding on this Court.

11 All right. Counsel for Mr. Epstein?

12 MR. GOLDBERGER: Now I get to stand.

13 Good afternoon. Jack Goldberger on behalf of
14 Mr. Epstein.

15 Your Honor, as a general statement of the law,
16 Mr. Scarola is correct.

17 THE COURT: Let me tell you where I have some
18 issues, Mr. Goldberger, with this. And Mr. Scarola
19 can speak to it as well, now that I understand its
20 origination.

21 The first sentence I don't really have a
22 problem with. The second sentence is where I have
23 a problem. It says, quote, However, the protection
24 that applies in a criminal proceeding does not
25 apply in a civil lawsuit when a person, based upon

1 the Fifth Amendment, refuses to answer questions
2 when evidence is offered against him which is
3 relevant to the case, end quote. I don't think
4 that's an accurate statement of the protection
5 mechanism.

6 MR. GOLDBERGER: I bracketed that myself, your
7 Honor, in the instructions Mr. Scarola gave me.
8 And my concern may be a little different than the
9 Court.

10 Whether that's accurate or not, I don't want
11 this jury to be thinking well, the right against
12 self-incrimination applies in a criminal case and,
13 therefore, he's guilty of everything that they're
14 trying to get an adverse inference on. There
15 simply is not a connect there. I don't know why we
16 need to mention anything about a criminal case in
17 this jury instruction other than Mr. Epstein under
18 the United States Constitution cannot be compelled
19 to provide evidence against himself in a criminal
20 proceeding, period.

21 And then, you know, and the guilt of a crime
22 may not be inferred from the exercise of the Fifth
23 Amendment right to remain silent, that's confusing,
24 your Honor, and it's just going to inject criminal
25 issues into this civil trial, and I think it's just

1 not necessary to the instruction that Mr. Scarola
2 is seeking that this Court give to this jury.

3 And then the second sentence, your Honor,
4 address, However, the protection that applies in a
5 criminal proceeding does not apply in a civil
6 lawsuit when a person, based on the Fifth
7 Amendment, refuses to answer questions. And I know
8 where the Court is heading because that requires a
9 balancing test at this point.

10 Judge Crow, by the way, your Honor, back in
11 November of 2013 addressed this very issue in an
12 order that he entered. And I'll quote from it.
13 This is Order on Counter-plaintiff Bradley Edwards'
14 Motion to Determine Status of Punitive Damage
15 Discovery and Applicability of Adverse Inference.
16 And in that order, your Honor, your predecessor
17 judge, Judge Crow, stated, "The counter-plaintiff,
18 Bradley Edwards" -- I'm sorry -- "The
19 counter-plaintiff Edwards' request for jury
20 instructions adverse inference instruction is
21 deferred until the time of trial. And at the time
22 of trial, upon specific analysis of the specific
23 questions and answers, including those propounded
24 in discovery, the Court will determine whether an
25 adverse inference instruction will or will not be

1 given."

2 So I think what Judge Crow meant in 2013 is
3 that you can't determine what the instruction is
4 going to be until such time as you hear the
5 question, and then you must first do a 403
6 analysis.

7 Well, first you must determine whether it's
8 relevant, then you have to do a 403 analysis, then
9 you have to decide whether under that 403 analysis
10 and respecting the sanctity of an invocation of the
11 Fifth Amendment privilege, whether an adverse
12 inference instruction is appropriate.

13 So for Mr. Scarola to simply ask you at this
14 point to have a blanket instruction to give to this
15 jury every time -- based on every time Mr. Epstein
16 invokes his Fifth Amendment privilege I do not
17 believe is a correct statement of the law. And I
18 would ask the Court to follow Judge Crow's order,
19 where he said I'm going to do it on a
20 question-by-question basis.

21 THE COURT: Well, a couple things. One is,
22 again, presuming, without knowing, what was going
23 through Judge Crow's mind at the time, but I would
24 think that the likely contemplation was that by the
25 time this case got to trial, whether it was in

1 2014, '15 and now '18, Mr. Epstein's criminal
2 issues would have been behind him and that there
3 was not at that particular juncture a need to rule
4 on something that was probably potentially, at
5 best, speculative. However, the time is now, so to
6 speak, because we've gone through in painstaking
7 detail most of those questions that the Court
8 deemed relevant and that Mr. Epstein invoked his
9 Fifth Amendment privilege and, therefore, the Court
10 would find that an adverse instruction would be
11 appropriate.

12 The language that I find fault with,
13 particularly in the second sentence, will have to
14 be ironed out and dealt with in a way that's going
15 to be palatable to the Court.

16 You certainly have the right, and it is a
17 matter of law in the civil context, that if you
18 seek to have an instruction provided to the jury on
19 this issue, it must be filed to preserve error.

20 Now, of course, if it was -- if it's deemed to
21 be erroneous to give an instruction at all, then
22 that requirement would be obviated. However, if
23 you are seeking an order with the Court's stated
24 intent that one will be given -- because as far as
25 the Court is concerned, it is necessary based upon

1 my rulings relative to the Fifth Amendment issue
2 that I've already reviewed -- I'll be glad to
3 review a proposed instruction that you and your
4 team prepared.

5 So at this time -- again, I'm going to give
6 the instruction. An instruction. The instruction
7 is still up in the air in terms of the wording.

8 I'm comfortable with actually the first
9 sentence, I'm comfortable with the second
10 paragraph. It's the second sentence in the first
11 paragraph that will need to be changed.

12 MR. SCAROLA: May I suggest a language change,
13 your Honor, because I think I understand --
14 although your Honor has not articulated the
15 concern, I think in rereading that second sentence,
16 I understand how it could be of concern. The Fifth
17 Amendment --

18 THE COURT: The concern potentially is the
19 blanket statement that protection that applies in a
20 criminal proceeding does not apply in a civil
21 lawsuit.

22 MR. SCAROLA: Yes, sir. I understand that.
23 What I suggest for consideration by the Court and
24 opposing counsel, instead of the instruction
25 reading, "However, the protection that applies in a

1 criminal proceeding does not apply," it should
2 read, "However, the prohibition against drawing an
3 adverse inference that applies in a criminal
4 proceeding does not apply in a civil lawsuit,"
5 et cetera. That's the part that does not apply.

6 You still have your Fifth Amendment
7 protection; however, you don't have protection
8 against an adverse inference. That's what I
9 intended to say. It's not said as clearly as it
10 should be, so I suggest that the language read,
11 "However, the prohibition against drawing an
12 adverse inference that applies in a criminal
13 proceeding does not apply in a civil lawsuit,"
14 et cetera.

15 MR. GOLDBERGER: Your Honor, I accept what Mr.
16 Scarola is trying to clarify, but I also accept
17 your invitation to come up with our own instruction
18 at this point.

19 MR. SCAROLA: I just want to be sure our
20 proposal is on the table. And that's what it is.

21 THE COURT: However, the prohibition against
22 drawing an adverse inference -- so we'll eliminate
23 the word "protection" and substitute "prohibition
24 against drawing an adverse inference."

25 MR. SCAROLA: Yes, sir, which I believe is an

1 absolutely exact statement of the law.

2 THE COURT: All right. I certainly can live
3 with that more so than I could letting that
4 sentence stand as it was.

5 But again, your invitation remains. I'll be
6 glad to take into consideration any proposed
7 instruction that you provide me, Mr. Goldberger,
8 and your team.

9 But again, I'm ruling that adverse instruction
10 is abundantly necessary, without question. And,
11 therefore, one will be given.

12 But again, I will invite you to prepare one
13 for the Court's consideration.

14 MR. GOLDBERGER: Thanks, Judge. That's
15 obviously subject to relevancy. Obviously.

16 THE COURT: I'll put on the record for you so
17 that there's no equivocation, I understand that
18 your blanket objection is to giving an adverse
19 instruction at all. That is recognized, and it's
20 overruled.

21 However, as I said, as a substitute, my
22 understanding of the law to be is it will be
23 necessary now that the Court has ruled, unless you
24 simply want to stand on your blanket objection,
25 that an alternative instruction must be given for

1 the Court to consider so as to preserve further
2 your objection.

3 So at this time -- again, I'm going to give
4 the instruction. An instruction. The instruction
5 is still up in the air in terms of the wording.

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7 sentence, I'm comfortable with the second
8 paragraph. It's the second sentence in the first
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6 and your team.

7 But again, I'm ruling that adverse instruction
8 is abundantly necessary, without question. And,
9 therefore, one will be given.

10 But again, I will invite you to prepare one
11 for the Court's consideration.

12 MR. SCAROLA: Your Honor, we thank you very
13 much for your generous allotment of time today.
14 Look forward to seeing you on Tuesday.

15 THE COURT: It's my pleasure.

16 Again, you all have done a superb job in both
17 your written and oral presentations. I appreciate
18 the excellent argument. As I've mentioned in the
19 past, if I had the pleasure of dealing with
20 attorneys of all of your caliber each and every
21 day, I wouldn't have the headaches that I do
22 physically and figuratively.

23 MR. SCAROLA: Your Honor, for planning
24 purposes, are we going to be conducting an initial
25 screening on Tuesday, having jurors fill out the

1 questionnaire and then returning for voir dire on
2 Wednesday? The initial screening I would think
3 would include hardship challenges and also
4 questions with regard to anyone's familiarity with
5 the underlying circumstances of this case.

6 THE COURT: That's something that we're going
7 to have to discuss, and I guess the best time to do
8 it is now. Take a little bit more time.

9 Madam court reporter, are you okay with a few
10 more minutes?

11 THE REPORTER: Sure.

12 THE COURT: My thinking is that likely it will
13 be necessary to preliminarily individually question
14 the venire panels. I'm going to have a hundred.

15 MR. SCAROLA: Yes, sir.

16 THE COURT: I know that will be time
17 consuming, but based upon the Dippolito case, and
18 this having some parallels as far as the publicity
19 aspects are concerned and the nature of the
20 allegations and admissions that we're dealing with
21 here, that it's incumbent upon the Court to
22 individually question each of the initial venire
23 members as to their knowledge of the individuals
24 involved in this case. Those are my thoughts
25 preliminarily.

1 MR. SCAROLA: May I make a suggestion?

2 THE COURT: Sure. Whoever is going to
3 primarily conduct voir dire, why don't you come up
4 to the podium so I can hear from you and you don't
5 have to jump up and down.

6 MR. SCAROLA: We've proposed a juror
7 questionnaire and I think that we're probably close
8 in terms of the content of that juror
9 questionnaire.

10 THE COURT: I haven't seen it.

11 MR. SCAROLA: If we're not there already,
12 we're close in terms of the contents of that
13 questionnaire.

14 THE COURT: I haven't seen it yet, so that's a
15 bit of a disadvantage for me because this is
16 something that goes unmentioned, but certainly it
17 is my philosophy in most of the cases that I handle
18 and all of the cases when I'm dealing with
19 exceptionally competent lawyers, once voir dire is
20 over, there's little that the jury hears from me.
21 You are the ones who are going to be essentially
22 steering this trial, and I leave it to competent,
23 experienced attorneys when it comes to
24 stipulations.

25 And the Fourth has reiterated that in a recent

1 interim order relinquishing jurisdiction on an
2 unrelated case -- a case that goes back to 1995,
3 actually -- and emphasize in that interim order the
4 significance of counsel's stipulation. And so I'm
5 here to make determinations of law, rule, where
6 necessary, but the conduct of the trial is going to
7 largely depend upon lead counsel.

8 So if you guys formulate a questionnaire of a
9 preliminary manner that you can agree on, you got
10 it. I'm more than willing to accede to that. And
11 if that is sufficient in your view to satisfy the
12 issue of pretrial publicity, knowledge of the
13 circumstances, knowledge of any the participants,
14 things of that nature that are critical to the
15 analysis, then that's satisfactory to me.

16 MR. SCAROLA: Well, my suggestion, your Honor,
17 is that once the group is assembled, the Court deal
18 with hardship issues in whichever way your Honor
19 ordinarily deals with hardship issues. Anyone who
20 is not asserting a hardship for which they are
21 seeking to be excused and anyone who does not
22 express any knowledge with regard to Epstein or
23 Rothstein, which I think are the two broad
24 categories that we need to address.

25 | THE COURT: I'm not as concerned with

1 Rothstein particularly now as I am, as I was -- I
2 really -- I've never really been concerned with
3 Rothstein.

4 MR. SCAROLA: From my perspective, we can
5 limit it to any knowledge with regard to Epstein.
6 And I would think this is the defense's primary
7 concern as well.

8 THE COURT: Or Mr. Edwards. There's nine
9 million hits, apparently.

10 MR. SCAROLA: Well, that's true. I think
11 those names should be made known to the jurors.
12 Anyone who recognizes those names and anyone who
13 has a hardship remains to be individually
14 questioned.

15 With regard to the others, they are given
16 questionnaires and they are asked to fill out those
17 questionnaires, and then they are excused for the
18 balance of the day. If someone survives individual
19 questioning, they're given a copy of the
20 questionnaire, they fill that out, and they're
21 excused for the balance of the day.

22 THE COURT: All right. So let me stop you
23 there so I'm understanding. The questionnaire that
24 you're proposing would be after the initial issues
25 regarding knowledge of any of the participants in

1 this case?

2 MR. LINK: That's what I envisioned, your
3 Honor. And I think Rothstein, Epstein all have to
4 be part of that dialogue.

5 MR. SCAROLA: I don't have a problem either
6 way.

7 THE COURT: That's fine. Certainly we'll have
8 the opportunity to question them further. If they
9 say they have heard of Scott Rothstein, we will be
10 able to drill down further into that inquiry.

11 MR. SCAROLA: Yes, sir. Anyone who has not
12 heard of any of those three people and does not
13 have a hardship fills out the questionnaire, leaves
14 with instructions to return the following morning.
15 Everybody else is subject to individual voir dire.

16 THE COURT: I'm thinking about it the other
17 way, and I'm thinking the individual voir dire has
18 to come at the initial point of whether or not any
19 of these people have any knowledge of the
20 protagonists here.

21 MR. SCAROLA: Well, it would. The only people
22 who are excused are those who have no hardship
23 concern to raise and don't know any of the three
24 people.

25 THE COURT: But the knowledge of the people

1 has to come first.

2 MR. LINK: It does, your Honor. You have the
3 sequence correct.

4 THE COURT: Because then hardship becomes a
5 non-issue.

6 MR. SCAROLA: That's fine.

7 THE COURT: Okay? It's the degree of their
8 knowledge, if any, that will have to be dealt with
9 first. If they have knowledge of a nature that
10 results in an immediate cause challenge, then we no
11 longer have to get into any of the other issues.

12 MR. SCAROLA: But does your Honor envision two
13 separate individual voir dires?

14 THE COURT: No.

15 MR. SCAROLA: So you would want to identify
16 everybody who has knowledge and everybody who is
17 claiming a hardship.

18 THE COURT: Has knowledge of a
19 disqualification nature. And if the grammar is
20 incorrect, forgive me for the late hour.

21 So, yes, it would be only those who would
22 be -- who would have knowledge that would subject
23 them to disqualification.

24 MR. SCAROLA: Yes, sir.

25 THE COURT: After that, I see no issue because

1 I have done it before and have had remarkable
2 results using now Chief Judge Gerber's, then Judge
3 Gerber here in the Circuit Court, his voir dire
4 colloquy on hardship. It's excellent. And it is
5 one that I've had very, very good success
6 utilizing. And I have done it in a group. And the
7 group setting is actually better.

8 MR. SCAROLA: I agree that needs to be done in
9 the group.

10 The bottom line is that those who survive the
11 initial screening process either because the
12 screening process is not necessary for them or they
13 have come in, been individually questioned and they
14 still qualify, those people all fill out a juror
15 questionnaire before they leave for the day and
16 they're instructed after filling out the
17 questionnaire to return the following morning.

18 THE COURT: What are you envisioning -- what
19 are you both envisioning on this questionnaire?

20 MR. SCAROLA: All of the basic information
21 that takes a long time to gather on an individual
22 basis that we won't need to gather individually;
23 demographic information, marital status, job
24 history --

25 THE COURT: So you think it would be better

1 with 100 -- let's use 80 as a round number -- 80
2 people -- it would be better -- and, Mr. Link, I
3 want your thoughts on the subject, too.

4 MR. LINK: Yes, sir.

5 THE COURT: It would be better to give them
6 the questionnaire, have them fill it out in our
7 presence and then dismiss them for the day so that
8 you all could evaluate this information, as opposed
9 to going through the standard questionnaire that I
10 have here, which is one we all use with demographic
11 information, the name, place of domicile,
12 occupation, marital status, spouse's occupation,
13 adult child occupation, prior jury service, parties
14 to any pending or past law suits, similar criminal,
15 knowing anyone in the courtroom -- we'll basically
16 take that out of the equation -- and can you and
17 will you be a fair juror in the case?

18 MR. SCAROLA: Yes. We include all that
19 information. We request some additional
20 information as well. They fill out the
21 questionnaires, the questionnaires are gathered,
22 multiple copies are made, the Court has one, each
23 side has a copy or more, if they choose to order
24 them, and we then have a chance to look at them
25 overnight and come back the following day and focus

1 our voir dire on those questions that need to be
2 asked.

3 THE COURT: I'd like to reserve my right to
4 ask the fairness question, so I don't want that
5 included in the questionnaire.

6 MR. SCAROLA: That's fine.

7 MR. GOLDBERGER: Just procedurally, your
8 Honor, I just did this in a case recently in this
9 circuit, and the procedure requested by Mr. Scarola
10 is close to what we did.

11 After the individual got through, they
12 survived the cut, they then filled out the
13 questionnaire, actually down in the jury assembly
14 room. They collected the questionnaires for us,
15 they gave us the copies overnight, and we came back
16 the next day, and it worked pretty well.

17 THE COURT: Okay. So that will be fine. So
18 what we'll do on Tuesday is the 100 people that
19 will be assembled -- we'll be doing jury selection
20 in 11A, so report there at 9:30 on Tuesday
21 morning -- we will go ahead and individually speak
22 to the jurors outside the presence of the
23 remainder. I don't want to do it with the white
24 noise. As I said, that would be headache producing
25 within minutes.

1 MR. SCAROLA: Easiest is just go into the jury
2 room.

3 THE COURT: I think that's the best way to do
4 it.

5 And you'll individually question each of the
6 panel after I have introduced everyone, after I've
7 had the opportunity to make them as comfortable as
8 possible and to explain what we're doing and why --
9 not why we're doing it, because I don't want to
10 hint at anything -- some may recognize the name
11 right off the bat -- but indicate to them that we
12 have agreed that we will question each of you
13 individually so as to find out only preliminary
14 information concerning the matter at hand, and
15 leave it pretty much at that.

16 And then we'll go over with them if they have
17 any knowledge of Mr. Edwards, Mr. Epstein or the
18 Rothstein matter. And I think that's the better
19 way to do it.

20 Obviously, the reason for my doing it, even
21 though it has not come under attack or objection,
22 is because I don't want the entire 100 people to be
23 tainted by one person spouting something that may
24 be of the nature that could arise here. So to
25 avoid that operation -- and, you know, it should be

1 pointed out and always keep in mind the cost to
2 summon people to jury service is extraordinarily
3 high, and so we don't want to waste the taxpayers'
4 money in that respect as well.

5 All right. So again, I want to thank and
6 commend each of you for your presentations today,
7 all that participated either directly or indirectly
8 in the presentation of all of your materials.

9 Thank you to our courtroom personnel, thank you to
10 our staff attorney, who's been assisting me. And I
11 wish you all a pleasant evening.

12 MS. ROCKENBACH: Your Honor, you almost got
13 away. I just have a proposed order on the motion
14 to stay that your Honor denied earlier, if I can
15 approach. I gave a copy to Mr. Scarola just a
16 moment ago.

17 THE COURT: Yes. What you can do tomorrow on
18 the substantive motions -- I'll be at the Bench Bar
19 Conference and you have my permission to track me
20 down. Our schedules are posted, so you'll know
21 where I'll be. But I'll be doing the civil
22 presentations during the afternoon. There's two of
23 them. So I'll be able to be reached there.

24 MR. SCAROLA: Thank you very much, your Honor.

25 THE COURT: Thank you again. Have a great

1 rest of the week. Thank you again to our courtroom
2 personnel. We'll be in recess.

3 (Thereupon at 4:50 p.m., the hearing was
4 concluded.)

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NOT A CERTIFIED COPY

C E R T I F I C A T E

— — —

THE STATE OF FLORIDA,
COUNTY OF PALM BEACH.)

I, Elaine V. Williams, Registered Professional Reporter, State of Florida at large, do hereby certify that I was authorized to and did report the above hearing at the time and place herein stated, and that it is a true and correct transcription of my stenotype notes taken during said hearing.

I further certify that I am not attorney or counsel of any of the parties, nor am I a relative or employee of any attorney or counsel of party connected with the action, nor am I financially interested in the action.

The foregoing certification of this transcript does not apply to any reproduction of the same by any means unless under the direct control and/or direction of the certifying reporter.

IN WITNESS WHEREOF, I have hereunto set my
hand this 9th day of March, 2018.

Elaine V. Williams
Notary Public in and for the State of Florida
My Commission Expires 03/27/21
My Commission #GG 72248

ORDERED in the Southern District of Florida on 11-30-10



Raymond B. Ray

Raymond B. Ray, Judge
United States Bankruptcy Court

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
Fort Lauderdale Division
www.flsb.uscourts.gov

IN RE:

CASE NO.: 09-34791-RBR

ROTHSTEIN ROSENFELDT ADLER, P.A.,

CHAPTER 11

Debtor.

AGREED ORDER CANCELLING HEARING ON MOTION
FOR RELIEF FROM AMENDED ORDER (DE 1068) AND TO COMPEL JEFFREY
EPSTEIN TO PAY FOR THE PRODUCTION OF ALL DOCUMENTS IN RESPONSE
TO HIS REQUESTS FILED BY INTERESTED PARTY
FARMER, JAFFE, WEISSING, EDWARDS, FISTOS & LEHRMAN, P.L.

The Motion for Relief From Amended Order (D.E. #1068) and to Compel Jeffrey Epstein to Pay for the Production of All Documents in Response to his Requests filed by Interested Party Farmer, Jaffe, Weissing, Edwards, Fistos & Lehrman, P.L (“Farmer”), was adequately resolved by agreement of the parties as follows. The law firm of Fowler White Burnett, P.A., will print a hard copy of all of the documents contained on the discs with Bates numbers added, and will provide a set of copied, stamped documents to the Special Master and an identical set to Farmer,

CASE NO.: 09-34791-RBR

who will use same to create its privilege log. Farmer agrees to prepare that portion of the privilege log relating to emails on or before December 15, 2010, with the remaining portion due thirty days from the date of this order, subject to other court orders. Fowler White will not retain any copies of the documents contained on the discs provided to it, nor shall any images or copies of said documents be retained in the memory of Fowler White's copiers. Should it be determined that Fowler White or Epstein retained images or copies of the subject documents on its computer or otherwise, the Court retains jurisdiction to award sanctions in favor of Farmer, Brad Edwards or his client.

As such, the Motion for Relief is deemed moot, and, the hearing set on the Motion for Relief [D.E. 1146] set for November 30, 2010 is hereby cancelled. The court reserves jurisdiction to tax fees and costs related to the preparation of the privilege log upon filing of a proper motion and hearing thereon.

#

Submitted by:

Seth Lehrman, Esq.
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Seth Lehrman, Esq. *who is directed to serve this Order to all parties of interest and to file a Certificate of Service.*