

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.

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**PLAINTIFF/COUNTER-DEFENDANT JEFFREY EPSTEIN'S**  
**NOTICE OF FILING HEARING TRANSCRIPT**

Plaintiff/Counter-Defendant, Jeffrey Epstein ("Epstein"), hereby gives notice of the filing  
of the attached November 29, 2017, hearing transcript.

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**CERTIFICATE OF SERVICE**

I certify that the foregoing document has been furnished to the attorneys listed on the Service List below on December 6, 2017, through the Court's e-filing portal pursuant to Florida Rule of Judicial Administration 2.516(b)(1).

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# EXHIBIT A

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2 FIFTEENTH JUDICIAL CIRCUIT, IN  
AND FOR PALM BEACH COUNTY, FLORIDA

3 Case No. 502009CA040800XXXXMB

4  
5 JEFFREY EPSTEIN,  
6 Plaintiff,

7 vs.

8 SCOTT ROTHSTEIN, individually,  
9 BRADLEY EDWARDS, individually,  
Defendants/Counter-Plaintiffs.

10 \_\_\_\_\_/  
11  
12 TRANSCRIPT OF PROCEEDINGS

13  
14 DATE TAKEN: Wednesday, November 29th, 2017  
15 TIME: 10:04 a.m. - 3:55 p.m.  
16 PLACE 205 N. Dixie Highway, Room 10C  
West Palm Beach, Florida  
BEFORE: Donald Hafele, Presiding Judge

17  
18 This cause came on to be heard at the time and place  
aforesaid, when and where the following proceedings were  
19 reported by:

20 Sonja D. Hall  
21 Palm Beach Reporting Service, Inc.  
1665 Palm Beach Lakes Boulevard, Suite 1001  
22 West Palm Beach, FL 33401  
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1           **THE COURT:** We are here on Epstein  
2           versus Rothstein and Edwards. The two  
3           applicable parties being dealt with -- have  
4           a seat, please. Thank you.

5           -- being Mr. Epstein and Mr. Edwards,  
6           and the counterclaim brought by Mr. Edwards  
7           against Epstein relative to a malicious  
8           prosecution claim that has been brought. We  
9           will confine our arguments to that  
10          particular matter. And we will keep in mind  
11          the following: Direct all of your arguments  
12          to the bench. Please do not speak to each  
13          other. Please stay away from any  
14          pejorative, unnecessary comments as it  
15          relates, in particular, to the  
16          counter-defendant.

17          I will remind you that the Court order  
18          that I executed relative to the continuous  
19          of the trial on 14 November this year,  
20          ordered that no replies be provided to the  
21          Court absent court order. You have violated  
22          my order. The replies are being ignored. I  
23          do not expect that to be repeated, absent  
24          sanctions. Is that understood? Both sides?

25          Ms. Rockenbach?

1           **MS. ROCKENBACH:** Yes, Your Honor.

2           **THE COURT:** Mr. Scarola?

3           **MR. SCAROLA:** Yes, Your Honor.

4           **THE COURT:** If I need them, I will ask  
5 for them. I have several bankers boxes'  
6 worth of materials here. I don't need  
7 anything further unless I request it.

8           I am well-advised in the case, as you  
9 may or may not know. I think I announced  
10 this earlier, for whatever it's worth, I  
11 handled the underlying cases in division AB.  
12 So I have had a long history in dealing with  
13 the matters that surround the instant  
14 action. Let's start with the  
15 counter-defendant's revised omnibus motion  
16 in limine.

17           **MR. LINK:** May it please the Court.

18           **THE COURT:** Yes, sir. Thank you.

19           **MR. LINK:** Thank you, Your Honor. We  
20 know that we have provided you with a  
21 forest, maybe two forests, and we really  
22 appreciate your spending the time to go  
23 through it.

24           If you think back to the motion that we  
25 filed to continue -- and we appreciate Your



1 Honor giving us time to understand what this  
2 case is about. The reason we need this time  
3 and we need your time today is because we  
4 are not sure what case we're trying. And we  
5 have to understand what case we're trying,  
6 Judge, in order to determine what evidence  
7 should come in.

8 So with Your Honor's permission, I  
9 would like to just show you what I've put up  
10 here, so --

11 **THE COURT:** Do you have a hard copy of  
12 your PowerPoint?

13 **MR. LINK:** Yes, sir.

14 **THE COURT:** If I may have it.

15 **MS. ROCKENBACH:** May I approach, Your  
16 Honor? I shared this with Mr. Scarola last  
17 evening.

18 **THE COURT:** Thanks.

19 **MR. LINK:** Your Honor, before we get  
20 to the blowup and the screen, I would like  
21 to just take a minute and talk to you about  
22 what we think the evidentiary issues we have  
23 raised in our motion that have to be  
24 resolved.

25 The first is -- and I know Your Honor

1 know -- you have told us this over and  
2 over -- you know the elements of malicious  
3 prosecution, and that you know them well,  
4 and they're well-settled.

5 But when you read the papers you will  
6 see there is a disagreement about what those  
7 elements are. And so I just want to take a  
8 moment to go through them and find out --  
9 what we really need to understand before we  
10 can try this case to a jury is this: what  
11 facts are in dispute that a jury has to  
12 decide. That's our struggle.

13 So, Your Honor, the malicious  
14 prosecution, element one, the commencement  
15 of a proceeding, that is not an issue in  
16 this case.

17 Element two. Was it filed by the  
18 present defendant -- the counter-defendant.  
19 Not an issue in this case.

20 Item three. The bona fide termination  
21 in favor of the plaintiff. That is an issue  
22 in this case.

23 That takes me to item two for one  
24 moment on my board, Your Honor, which is  
25 burden of proof. The counter-plaintiffs

1 suggest in their papers that once they prove  
2 the underlying claims by Mr. Edwards' three  
3 plaintiffs that were settled in 2010, that  
4 they have met enough to go forward and skip  
5 by the bona fide termination.

6 The reason the bona fide termination is  
7 important is that that is the one area in  
8 the burden of proof -- the one area that  
9 shifts to us as --

10 **THE COURT:** If I'm not mistaken, are we  
11 talking about bona fide termination of the  
12 Epstein action brought by Epstein versus  
13 Rothstein and Edwards?

14 **MR. LINK:** Yes.

15 **THE COURT:** So why are we dealing with  
16 the underlying claims of the bona fide  
17 termination issue?

18 **MR. LINK:** I don't know why we are,  
19 except that is part of the papers that we  
20 are dealing with.

21 **THE COURT:** They are part of the  
22 papers, as I understand it, so as to  
23 establish a nexus between the reason why  
24 Mr. Epstein brought this claim in the first  
25 place against Rothstein and Edwards, and to

1 try to determine the rationale that  
2 Mr. Epstein had to bring this case in the  
3 first place, which is a question that the  
4 jury is going to have, which is a question  
5 that the Court has, and what was the reason  
6 behind bringing this case.

7 Was it one of vengeance? Was it one of  
8 hatred? Was it one of --

9 **MR. LINK:** Malicious.

10 **THE COURT:** Malicious. Let me get to  
11 the point. Was it one of feeling that he  
12 was taking -- that the part of those whose  
13 investments were had by Rothstein as a  
14 result of that massive Ponzi scheme -- as he  
15 indicates in his deposition -- he felt that  
16 these people were taken advantage of as a  
17 result of Rothstein's misdeeds? I don't  
18 know what the reason was, and I'm sure the  
19 jury is going to ask what the reasons were.  
20 But there is going to be some introduction,  
21 albeit it tempered -- clearly tempered --

22 **MR. LINK:** Yes, sir.

23 **THE COURT:** And Ms. Rockenbach -- I  
24 believe she was the signatory to the  
25 motion -- acknowledges that some of that

1 information is going to be in. There is no  
2 way we're going to be able to sanitize the  
3 case to that extent.

4 **MR. LINK:** We wouldn't ask the Court to  
5 do that.

6 **THE COURT:** So that's what I'm trying  
7 to understand. Why are we going there when  
8 it comes to bona fide termination?

9 **MR. LINK:** The reason is that I want to  
10 make sure that we are all on the same page  
11 about whose burden of proof in the case,  
12 because that will make a difference about  
13 the evidence that needs to come in.

14 **THE COURT:** I don't think there is any  
15 issue -- I don't believe Mr. Scarola is  
16 taking issue that initially the burden of  
17 proof is with the counter-plaintiff Edwards  
18 as to the determination or the showing that  
19 there was a bona fide termination of the  
20 case in his client's favor -- this case,  
21 meaning Epstein versus Rothstein and  
22 Edwards, and specifically Rothstein versus  
23 Edwards. Is that fair, Mr. Scarola?

24 **MR. SCAROLA:** It's fair, Your Honor,  
25 that we acknowledge that we have the burden

1 of proof with regard to every element.

2 It is also our position that the issue  
3 as to whether the underlying claim was bona  
4 fiably terminated in favor of Bradley  
5 Edwards is an issue of law for the Court.

6 There are no disputed -- Mr. Edwards is  
7 present, yes.

8 There are no disputed issues of fact  
9 with regard to what happened, and therefore,  
10 the Court will need to make the legal  
11 determination as to whether that constitutes  
12 a bona fide termination. And we believe  
13 that that is an issue that has been resolved  
14 through the appellate process as well.

15 **THE COURT:** Up to the point where  
16 there's a belief that the issue has been  
17 resolved through the appellate process as  
18 well, I agree with Mr. Scarola's position.

19 At this point, in my view, ultimately  
20 it becomes potentially a legal issue. If  
21 the facts are clear and there's no factual  
22 dispute, then it becomes purely a legal  
23 decision as to whether or not there's been  
24 bona fide termination.

25 **MR. LINK:** We agree 100 percent, Judge.

1 100 percent.

2 **THE COURT:** I don't want to deviate --

3 **MR. LINK:** I know. So I'm going to go  
4 to the next piece, which is the key, which  
5 is the absence of probable cause. And the  
6 absence of probable cause focuses here --  
7 the absence of probable cause -- and this is  
8 what Your Honor was just talking about --  
9 focuses here. December 7th, 2009. That's  
10 when Mr. Epstein brought his claim against  
11 Rothstein, Mr. Rothstein's firm and  
12 Mr. Edwards.

13 **THE COURT:** Did he bring it against  
14 Rothstein's firm? I only have Rothstein  
15 individually --

16 **MR. SCAROLA:** Rothstein, individually  
17 and Bradley Edwards, individually.

18 **MR. LINK:** My apologies.

19 **THE COURT:** That statement is  
20 retracted. It's Rothstein individually and  
21 Edwards, individually. Mr. Scarola  
22 concurred and Mr. Link has now concurred.

23 **MR. SCAROLA:** And L.M., which I think  
24 is of some significance also.

25 **THE COURT:** Was she brought in

1 originally?

2 **MR. SCAROLA:** Yes.

3 **MR. LINK:** She was, Judge.

4 Here is our view of what we have to do  
5 when we look at the evidence we are going to  
6 show you -- the exhibit list, the testimony  
7 to come in -- is to focus on what the jury  
8 is going to have to decide.

9 Again, I'm not sure what the facts are  
10 in dispute, but it's here. The only  
11 information that makes a difference is what  
12 Epstein -- what Epstein looked at; what he  
13 considered; the inferences he drew from that  
14 information; and whether when you take the  
15 totality of that information, Your Honor, he  
16 had a reasonable basis to bring a civil  
17 proceeding against Mr. Edwards.

18 I don't think there is any dispute. I  
19 have read the Court's transcript where the  
20 Court has said -- the case against  
21 Mr. Rothstein, I understand that. I don't  
22 think anybody is disputing that. The  
23 question is was there sufficient --

24 **THE COURT:** Hold on. Hold on a minute.

25 Let's not take my comments out of context.



1 Whether or not there was ever any issues  
2 that Mr. Epstein had viably against either  
3 Rothstein, Edwards or L.M. are still, as far  
4 as the Court is concerned, unanswered.

5 **MR. LINK:** Remember we have a default  
6 against Mr. Rothstein.

7 **THE COURT:** That's a different issue.

8 **MR. LINK:** I understand your point,  
9 Judge.

10 **THE COURT:** I don't want my comments to  
11 be taken out of context.

12 **MR. LINK:** Fair enough.

13 **THE COURT:** A default is different than  
14 a court indicating some type of  
15 understanding as to Mr. Epstein's cause of  
16 action against Rothstein in this particular  
17 case. Because, as I said, the jury will  
18 question and the Court continues to question  
19 why Mr. Epstein brought this case in the  
20 first place.

21 **MR. LINK:** Fair enough. Thank you for  
22 the clarification.

23 **THE COURT:** And the reason why that's  
24 important is because the counter-plaintiff  
25 has argued that circumstantially -- and

1 based upon, in large part, invocation of the  
2 Fifth Amendment by Mr. Epstein, they are  
3 going to need to prove that or disprove that  
4 potentially through the Fifth Amendment  
5 issues that we are going to be discussing.

6 Because while Mr. Epstein may have his  
7 own motivation, circumstantially it is going  
8 to be up to the plaintiff to prove that  
9 motivation was not, in fact, in good faith.  
10 And I'm using good faith not as a term --  
11 not as a legal term, but more of a term of  
12 art.

13 **MR. LINK:** I understand that.

14 **THE COURT:** So, it brings us to the  
15 point that we need to get to. So I am with  
16 you so far in terms of where you're going.  
17 And you're leading me through this. I  
18 appreciate it very much.

19 But it does get us now to this really  
20 critical issue of, well, again, there's this  
21 huge question that's being asked by -- going  
22 to be asked by the finder of fact and the  
23 trier of the law, and that is, how does the  
24 counter-plaintiff prove its case when  
25 Mr. Epstein has answered selected questions?

1 I was -- I am now paraphrasing  
2 Mr. Epstein's answers in large part. I  
3 found out that Rothstein was factoring these  
4 cases. I found out that these investors  
5 were being taken advantage of. Taken  
6 advantage of through the forging of an  
7 order -- forging of an order that purported  
8 to have the signature of Judge Marra -- a  
9 tremendously well-respected jurist in this  
10 community, now taken senior status.

11 I, meaning Mr. Epstein, was not only  
12 concerned about Rothstein doing what he did,  
13 but also I had suspicions that Mr. Edwards  
14 was involved in this process, because there  
15 were some articles that discussed the query  
16 could Rothstein have done this alone, and  
17 implicated at least the cases -- not to my  
18 knowledge Mr. Edwards -- but the cases that  
19 Mr. Edwards was serving as lead counsel.

20 Some before this particular court in  
21 division AB back in 2009 and that period of  
22 time -- perhaps just around that period of  
23 time.

24 So there's going to be a large question  
25 in the trier-of-facts' mind and remains in

1 the Court's mind. How was Mr. Epstein  
2 damaged by what transpired from the  
3 standpoint of Rothstein, or what may have  
4 transpired from his own mind as it relates  
5 to Mr. Edwards?

6 That's going to be a huge question, and  
7 remains a huge question. What was Epstein  
8 doing at that time, meaning, why did he file  
9 this lawsuit? What was his damages? Why  
10 was he even doing this in the first place?  
11 That's going to create an issue.

12 And the reason I bring it up is solely  
13 to get into the argument that's going to be  
14 raised by the counter-plaintiff Edwards.  
15 And that is how do we prove this where  
16 Epstein chooses to answer only certain  
17 questions regarding his motivation, i.e.,  
18 malice, and probable cause?

19 But it doesn't answer questions germane  
20 to his mindset that, okay, there were these  
21 factored cases by Rothstein. He's paying a  
22 severe price for what he did.

23 The millionaire investors who got  
24 involved in this Ponzi scheme have clearly  
25 been damaged and restitution has been paid,

1 to my understanding, to the extent that  
2 those assets of Rothstein's and those who  
3 were otherwise implicated paid what they  
4 paid.

5 But how is Mr. Epstein damaged, and  
6 what was his motivation -- other than  
7 altruism, other than the questions that were  
8 asked by Mr. Scarola, which he didn't  
9 answer -- that could have been referencing a  
10 myriad of things: vengeance, anger,  
11 hostility. But they have that ability -- in  
12 my respectful view, in reading these  
13 materials -- to be able to raise those  
14 issues and perhaps through the Fifth  
15 Amendment Avenue.

16 **MR. LINK:** Maybe, Your Honor.

17 **THE COURT:** We need to concentrate on  
18 that. And we need to not only look at --  
19 what I'm trying to say is, through  
20 Ms. Rockenbach's excellent written  
21 presentation --

22 **MR. LINK:** I helped a little bit,  
23 Judge.

24 **THE COURT:** Actually, Mr. Link signed  
25 it.

1           **MR. LINK:** There you. I took credit  
2 for it all, Your Honor.

3           **THE COURT:** My apologies.

4           **MR. LINK:** It was a little bit of me.

5           **THE COURT:** We get in trouble when we  
6 assume. Irrespective of that, Mr. Link  
7 signed it. So you can tell I'm more  
8 concentrated on the body of work than who  
9 necessarily executed it.

10           But what I am trying to say is, what I  
11 believe respectfully is being done here is  
12 it's a one-sided argument.

13           Now, I agree that you have to zealously  
14 represent your client and take his side, and  
15 I have no problem with that. But what I'm  
16 also suggesting is, at the same time, there  
17 has to be some consideration and some  
18 concession that they have a viable -- I  
19 won't say viable claim -- but they have  
20 viable arguments to support what they are  
21 trying to accomplish. And the means to do  
22 that is largely hamstrung by Mr. Epstein's  
23 refusal to answer questions.

24           Go ahead.

25           **MR. LINK:** Thank you, sir.

1           Those are exactly the issues we have.

2           And there's one thing, Your Honor, I think  
3           that I would ask you to consider. This is  
4           very important. And I will tell you that if  
5           you walk through these elements, this  
6           element right here -- this is the key -- the  
7           absence of probable cause does not take into  
8           consideration anybody's motive, their anger,  
9           their malice, their state of mind or  
10          anything else other than -- other than --  
11          and we will get to malicious -- you are  
12          dead-on -- but probable cause is an  
13          objective standard. If the facts are not in  
14          dispute, it's an objective standard to be  
15          determined by this Court. That's what the  
16          Florida Supreme Court has told us.

17          So, what's important -- what's  
18          important is the counter-plaintiff doesn't  
19          challenge that this information was  
20          available. They don't challenge that the  
21          information, when read, it says Rothstein  
22          was involved in a Ponzi scheme. It says  
23          Mr. Epstein's three cases were being used to  
24          lure investors and information about them  
25          was fabricated.

1           So there's not a dispute about that.

2           The question is this. The question is, did  
3           Mr. Epstein have some reason to doubt or not  
4           believe the information he was reading.  
5           Because even though probable cause, Your  
6           Honor, is an objective standard, if I know  
7           what I'm reading is false, then I haven't  
8           really in good faith relied on it.

9           But it doesn't matter. The case law  
10          says you cannot establish probable cause or  
11          the lack of it by the most actual malice  
12          known to man.

13          I can hate this gentleman. I can want  
14          to bury this gentleman. I can want to run  
15          him out of business. But if I have  
16          objective probable cause --

17          **THE COURT:** And you are saying, as a  
18          matter of law, you are suggesting to me that  
19          newspaper articles -- which are the bulk of  
20          the reliance that Mr. Epstein is  
21          suggesting -- is sufficient to establish  
22          probable cause?

23          **MR. LINK:** Yes, sir, I am.

24          **THE COURT:** We are really not there yet  
25          because --



1           **MR. LINK:** I know we're not.

2           **THE COURT:** -- this isn't a motion for  
3 summary judgment.

4           **MR. LINK:** It's not. But I wanted to  
5 answer the Court's question.

6           I think it's really important, Judge,  
7 as we go forward, that we differentiate the  
8 element of probable cause and the element of  
9 malice. Because you are exactly right.  
10 When you get to item five, malice, what's  
11 his intent to hurt Mr. Edwards. That is  
12 absolutely relevant for the jury's  
13 determination. No question. Okay. It is.  
14 But it is not relevant to whether there was  
15 a lack of probable cause. And that's a  
16 balance that we have here because --

17          **THE COURT:** What's not relevant in the  
18 absence of probable cause? Are you talking  
19 about malice?

20          **MR. LINK:** Malice. Intent. We will  
21 show you cases, Your Honor, where it says if  
22 you have probable cause and you have malice,  
23 there's no claim for malicious prosecution.  
24 You only look at malice once you've  
25 established probable cause. You can't use

1 malice to establish probable cause. You  
2 can, on the other hand, use probable cause  
3 to establish malice.

4 **THE COURT:** I understand.

5 **MR. LINK:** That makes sense?

6 **THE COURT:** I understand you  
7 completely.

8 **MR. LINK:** The reason that's important  
9 is because if you combine -- if you say,  
10 What's in his mind? How is he trying to  
11 hurt this guy? When he's reviewing the  
12 Razorback complaint, the U.S. Attorney's  
13 statement, and the newspapers articles that  
14 are out there, then you are combining malice  
15 and probable cause.

16 So, that's what we have to avoid. It's  
17 really critical, and here is why.

18 By the way, I want for the Court to  
19 know I really appreciate the hard work that  
20 Mr. Edwards' team has put in. They did a  
21 lot of writing. We did a lot of writing.  
22 We have crystalized the issues for this  
23 Court's determination.

24 So one of the things that Mr. Edwards  
25 tells us in his response to our motion in

1 limine, he wants to tell us how he's going  
2 to try this case. And here is what he says.  
3 "Edwards starts by proving the truth of the  
4 claims he brought on behalf of his three  
5 clients."

6 That evidence, Your Honor, if this case  
7 hadn't settled, would absolutely have been  
8 relevant to that trial, without a question.

9 Every -- I shouldn't say every -- many  
10 of the questions that were asked of  
11 Mr. Epstein that he took the Fifth to very  
12 well could have been relevant to this  
13 lawsuit, okay? But the truth of the  
14 allegations that they were making has  
15 nothing to do with what Mr. Epstein reviewed  
16 in 2009 before he brought the suit.

17 There's nothing that's in their mind or  
18 that happened to them that can have  
19 influenced Mr. Epstein when he was reading  
20 the material.

21 **THE COURT:** So what you're suggesting,  
22 though, Mr. Link, is that there could never  
23 be a successful plaintiff in a malicious  
24 prosecution case.

25 **MR. LINK:** No, sir. I'm not suggesting

1 that at all. I will give you an example.  
2 What if this lawsuit was filed and there  
3 were two articles that existed that said  
4 that Mr. Edwards had nothing to do with the  
5 Ponzi scheme. And Mr. Epstein, in looking  
6 at the information that was available, took  
7 that information -- or he knew Mr. Edwards  
8 wasn't involved at all in any way -- and I'm  
9 not telling you that Mr. Edwards was. I am  
10 saying based on the information at that  
11 time --

12 **THE COURT:** Where was that information,  
13 by the way, that suggests Mr. Edwards had  
14 involvement?

15 **MR. LINK:** The information that  
16 suggests that he had involvement is this.

17 **MS. ROCKENBACH:** Your Honor, may I  
18 approach? I have a copy that might be  
19 better for the Court. I shared this with  
20 Mr. Scarola yesterday.

21 **MR. LINK:** Your Honor asked a great  
22 question. It is without a doubt nothing in  
23 the press or the U.S. Attorney's office or  
24 anywhere else that comes out before  
25 Mr. Rothstein goes down that connects

1 directly Mr. Edwards to the Ponzi scheme.

2 It does not.

3 So what we have to then look at is this  
4 information. So you have as your  
5 backdrop -- put yourself in Mr. Epstein's  
6 shoes for a minute. You have as a backdrop  
7 your reading that the three cases that you  
8 have are being used to solicit investors,  
9 and you're being told that you have already  
10 offered a \$30 million settlement, which was  
11 untrue. That you've already agreed to pay  
12 \$200 million, which was untrue. That there  
13 were 50 other claimants out there at the  
14 Rothstein firm, which were untrue. And you  
15 read all of that, and then you start  
16 thinking about what's happened in the  
17 litigation against you.

18 In the litigation against you, you  
19 start to see things that are different from  
20 when Mr. Edwards was a sole practitioner.

21 **THE COURT:** Freeze that phrase for a  
22 moment.

23 **MR. LINK:** Yes, sir.

24 **THE COURT:** When you think about the  
25 litigation that was brought against you --

1 when you are saying what Mr. Edwards brought  
2 against Mr. Epstein, correct?

3 **MR. LINK:** Yes, sir.

4 **THE COURT:** Very well.

5 **MR. LINK:** Yes, sir. That's what I'm  
6 talking about.

7 **THE COURT:** I want to make sure that  
8 that is what you're saying.

9 **MR. LINK:** We're on the same page.

10 Edwards' clients versus Mr. Epstein.

11 And you look at the time period that  
12 Mr. Edwards is at Rothstein's -- this is  
13 really the question. I think it's a legal  
14 question. The question is, was there  
15 sufficient smoke for you to think there  
16 could be fire? Was there sufficient  
17 information that you could draw a reasonable  
18 inference from that would allow you to bring  
19 a civil claim? And here is what we see. We  
20 see many different things that happened.

21 So, for example, all of a sudden you  
22 have Mr. Edwards and his team saying they  
23 want to depose Donald Trump, Bill Clinton.  
24 And there wasn't any testimony from the  
25 three folks that Mr. Edwards represented

1 that they had any contact with Mr. Clinton  
2 or Mr. Trump, or any of the other folks that  
3 they said they wanted to depose.

4 The three folks that Mr. Edwards  
5 represented never said they were on one of  
6 Mr. Epstein's planes, yet they spent 12  
7 hours deposing Mr. Epstein's pilot and  
8 didn't ask a single question about  
9 Mr. Edwards' clients.

10 He had a state court case filed on  
11 behalf of L.M. He then files a 234-page  
12 federal court complaint with 100-and-some  
13 counts that he never serves.

14 He then files a motion for fraudulent  
15 transfer in the federal case saying  
16 Mr. Epstein is fraudulently transferring  
17 assets, and lists in there all these assets  
18 he has. And Judge Marra denies it and says  
19 this was brought without any evidence  
20 whatsoever.

21 So if you look at these things that  
22 happened, and you now have them in the  
23 context of, wait a minute, I just read that  
24 Rothstein was telling folks that these cases  
25 were worth \$500 million, and Mr. Epstein has

1 already offered \$200 million. And that's  
2 not enough. We are going to get more.

3 If you are Mr. Epstein, you start  
4 thinking, Well, was all of this stuff being  
5 done to generate information to show the  
6 investors in the Ponzi scheme? Then we know  
7 that the flight logs that came from the  
8 pilots, that had nothing to do with the  
9 three plaintiffs that Mr. Edwards used were  
10 used by Rothstein to show investors.

11 **THE COURT:** But couldn't that same  
12 information, Mr. Link, serve the  
13 counter-plaintiff as well as it might serve  
14 Mr. Epstein, which creates a potentially  
15 classic jury question? And that is, that  
16 all of these things that were done -- the  
17 inconveniencing of his pilots, the  
18 inconveniencing of his high-level friends,  
19 the implications of these high-level  
20 friends -- all of these things that were  
21 done to anger Mr. Epstein at or around the  
22 time, if my memory serves, when these cases  
23 were being settled -- doesn't that serve  
24 them just as well to create an issue of  
25 probable cause as it does your client to



1 say, Well, all of these things were done?

2 And it then gets us back to what I  
3 earlier asked, and that is, even if that's  
4 taken as true, even if Rothstein was pumping  
5 these cases up and claiming to these  
6 investors that it was then publicly known  
7 through primarily the press, media was  
8 swarming -- as they should have been -- over  
9 this absolute criminal act, the likes of  
10 which, from an economic standpoint, from a  
11 private individual, perhaps has still never  
12 been seen before, other than Mr. Madoff in  
13 New York.

14 But the point I'm trying to make is, it  
15 still gets me back to that same question.  
16 Yeah, Mr. Epstein may have been angry, he  
17 may have been concerned about his friends,  
18 the high-level people that he associated  
19 with, and how this could drag him down as  
20 well as them. Certainly a bona fide  
21 concern, perhaps.

22 But then it gets to the question, yeah,  
23 with all of that, it still gets me to my  
24 original question and what the jury is going  
25 to be asking, more importantly, how was

1 Mr. Epstein damaged as a result of this  
2 activity?

3 **MR. LINK:** May I answer that question?

4 But then I have to weave back, because you  
5 gave me something I have got to talk about.

6 **THE COURT:** Sure.

7 **MR. LINK:** The damage that he felt --  
8 now, let's keep in mind what case we're  
9 trying today -- or will be trying -- which  
10 is whether there was probable cause to go  
11 forward.

12 **THE COURT:** Against Mr. Edwards?

13 **MR. LINK:** Against Mr. Edwards. We are  
14 not trying the case against Mr. Edwards. We  
15 don't have to prove who would have won that  
16 case. So I'm going to get back to that in a  
17 sec.

18 What he thought his damages were at the  
19 time, his real dollar damages is that he was  
20 spending money paying lawyers to defend what  
21 was happening during this Rothstein period.

22 And so if you connect the dots and say,  
23 okay -- you said it better than I did,  
24 Judge. Rothstein is doing these criminal  
25 activities, which included using my name,

1 three legitimate lawsuits --

2 **THE COURT:** Who is my?

3 **MR. LINK:** Mr. Epstein.

4 **THE COURT:** Okay.

5 **MR. LINK:** I keep trying to make you  
6 Mr. Epstein for my example. It's the only  
7 way it works for me.

8 If you're Mr. Epstein and you see --  
9 Judge, you see what's in the press and how  
10 your -- I want to make this clear. We have  
11 never challenged when Mr. Edwards filed them  
12 that he didn't have a good faith, legitimate  
13 basis to do so back in 2008. That's not  
14 what this case is about.

15 But in 2009, if you're Mr. Epstein and  
16 you see all of this information and you look  
17 at what's happening here and you say, Have I  
18 spent legal fees, paid my lawyers in order  
19 to have to defend activity that was really  
20 designed not to benefit the three  
21 plaintiffs, but to let Rothstein take it and  
22 show investors?

23 And we know, as a matter of fact,  
24 Judge, that Rothstein did it. He used  
25 bankers boxes from the Epstein cases. He

1           used flight manifests from the Epstein  
2           cases. So he actually used the information  
3           that was provided to him by Mr. Edwards to  
4           show investors.

5           This is going to answer your question.  
6           This is key. I think I remember your  
7           question. This is key, if I remember your  
8           question. You said what if Mr. Edwards had  
9           a legitimate purpose? I believe Mr. Edwards  
10          can get on the stand and persuade you,  
11          Judge, he had a reasonable basis for doing  
12          everything he did.

13          **THE COURT:** I didn't ask that question.

14          **MR. LINK:** Well, you said what if he  
15          had a legitimate basis? What he was doing  
16          was trying to benefit the three folks.

17          **THE COURT:** No. What I said was,  
18          couldn't that information that you just  
19          indicated to me that forms the basis for  
20          Mr. Epstein allegedly bringing this suit,  
21          could that not be -- could that not be  
22          utilized by Mr. Edwards to submit to the  
23          fact that -- submit the fact that the reason  
24          why Epstein brought this suit in the first  
25          place was one of trying to get back at

1 Edwards for inconveniencing his friends, for  
2 dragging those friends -- high-level friends  
3 into the process, for inconveniencing his  
4 pilots? All of these things that I brought  
5 out. That was the point that I made.

6 **MR. LINK:** What element of the claim is  
7 that for? What element? That's malice.  
8 It's not probable cause. What Mr. Edwards  
9 thought, what he did, why he did it, has  
10 nothing to do with probable cause. It may  
11 have, Your Honor, a lot to do with malice.

12 **THE COURT:** I think it has a great deal  
13 to do with probable cause, quite frankly. I  
14 think it's a mixed bag, so to speak, when  
15 you get to probable cause and malice.

16 I agree with you that probable cause  
17 has to be proven before malice. But I think  
18 that there are -- certainly, in a case like  
19 this, which is an extremely unusual and  
20 complex matter that there are lead-overs, if  
21 you will, as it relates to probable cause  
22 and the malice elements. And I don't think  
23 it can be disputed here. This is not like  
24 the simple cases that we read in Florida  
25 Jurisprudence that deal with malicious

1 prosecution the more simple concrete-type of  
2 cases that sets one plaintiff against one  
3 defendant. This is different.

4 And I think that the issue of malice  
5 and probable cause are going to be somewhat  
6 congealed and somewhat of a lead-over from  
7 probable cause to malice. Not vice versa.  
8 I understand the parameters legally in that  
9 regard.

10 **MR. LINK:** I agree with everything you  
11 just said except -- without incurring the  
12 wrath of the Court -- I have to dispute the  
13 first part you said because I don't believe,  
14 Your Honor, that the law is, what's in  
15 Mr. Edwards' mind -- what's in Mr. Epstein's  
16 mind about his reasons for bringing the  
17 case, have anything to do with probable  
18 cause. I think they have everything to do  
19 with a malice.

20 And the law is very clear. You can't  
21 use malice to demonstrate probable cause.  
22 So if you can't use malice, what difference  
23 does it make how much Mr. Epstein may have  
24 hated Mr. Edwards and wanted to do him harm?

25 **MR. SCAROLA:** I thought that you were

1           pausing, and I wanted to raise a procedural  
2           question. If you are pausing --

3           **MR. LINK:** No problem. I never know  
4           when I'm pausing either.

5           **MR. SCAROLA:** I have the same problem.

6           Your Honor, I'm a little bit confused  
7           about the direction that that argument is  
8           taking, because I thought we were arguing a  
9           motion in limine to exclude evidence. And  
10          once there's a concession that the evidence  
11          is relevant to malice, even if we accept --  
12          and I don't -- that it's not relevant to  
13          probable cause, it's relevant and it comes  
14          in.

15          So I suggest that, since we have had an  
16          on-the-record concession of the relevance of  
17          the evidence, that part of the argument is  
18          over.

19          **THE COURT:** Well I think Mr. Link -- I  
20          am giving him latitude, because I  
21          interrupted him to ask these questions that  
22          really needed to be answered from my  
23          standpoint. And as I look at these cases  
24          that are going to trial, I also try to put  
25          myself, not in either parties' shoes, but

1           certainly in juries' shoes when it comes to  
2           questions that they're going to have, and  
3           that really needs to be answered, because it  
4           helps me to narrow the issues as well. So I  
5           appreciate your courtesies in that respect.

6           **MR. LINK:** My pleasure, Your Honor.

7           **THE COURT:** Let's go ahead -- and if we  
8           could, let's get to the core issues that  
9           we're dealing with today and see where we  
10          are, because Mr. Scarola also makes a good  
11          point. I mean, a lot of this material that  
12          seems to be a matter of your motion when it  
13          comes to excluding this testimony or this  
14          evidence, it's essentially been conceded  
15          that most of this evidence is going to be  
16          relevant.

17          **MR. LINK:** I didn't say that. I want  
18          to be very clear. I did not say that the  
19          evidence that he wants to submit or the  
20          questions he asked or the exhibits that he  
21          listed should come in on malice. What I  
22          said to the court is that Mr. Epstein's  
23          state of mind and how much he would have  
24          disliked Mr. Edwards or wanted to hurt him  
25          would be relevant to malice. That's very



1 different than asking the question about do  
2 you have a preference for minor children.

3 **THE COURT:** So if we can, move now to  
4 issues of evidence that is being sought to  
5 be limited in terms of its introduction to  
6 the jury.

7 **MR. LINK:** Yes, Your Honor. My partner  
8 Ms. Rockenbach will handle that.

9 And, Your Honor, just so the Court's  
10 aware, Ms. Rockenbach has a professionalism  
11 meeting at Mr. Scarola's office that starts  
12 at noon. Do you mind breaking at 11:45?

13 **THE COURT:** That's fine. I have a  
14 court luncheon, as well, with my colleagues  
15 down in the judicial dining room at noon, so  
16 that's not a problem.

17 **MS. ROCKENBACH:** Your Honor, I would  
18 like to take the first issue in the  
19 omnibus -- revised omnibus motion in limine.

20 But before we talk about Fifth  
21 Amendment, I just want cite one case to Your  
22 Honor before we leave this arena of probable  
23 cause.

24 When I was reviewing the case law in  
25 preparation for this hearing, I chuckled to

1 think that the Florida Supreme Court in 1926  
2 called this an ancient action, malicious  
3 prosecution. But it is that very case that  
4 answers a point that Your Honor was just  
5 discussing. I'm talking about the Tatum  
6 Brothers case. And it says in Tatum  
7 Brothers --

8 **THE COURT:** Do you have a tab number  
9 for me?

10 **MS. ROCKENBACH:** The tab number is -- I  
11 don't know that actually. I might be able  
12 to get that.

13 **THE COURT:** If it's in your binder, I  
14 can probably find it. You did a good job  
15 with your --

16 **MS. ROCKENBACH:** The index.

17 **THE COURT:** -- index. Yeah. I don't  
18 have a Tatum Brothers by that first name.

19 **MS. ROCKENBACH:** I apologize, Your  
20 Honor. It's at 92 Florida 278, and it's  
21 published in 1926. The court said it is  
22 well established that want of probable cause  
23 cannot be inferred from malice, however  
24 great such malice may be, even the most  
25 express malice.

1           So before we leave that arena, that  
2           case back in 1926 said that you can't go  
3           backwards. You can't find malice then infer  
4           probable cause.

5           **THE COURT:** I understand. I am just  
6           making a point that, in this set of unusual  
7           facts, it's not necessarily a clear-cut  
8           distinction that can be drawn.

9           But again, sometimes facts will create  
10          these types of issues and they will be  
11          different than the 1926 set of facts.

12          But go ahead.

13          **MS. ROCKENBACH:** This is true.

14          So, Your Honor, the first issue about  
15          the Fifth Amendment, I want to be clear that  
16          with regard to probable cause, my client has  
17          an original complaint that was filed against  
18          Mr. Edwards in December of 2009.

19          He obviously didn't raise any Fifth  
20          Amendment with regard to any allegations  
21          that he filed in public court.

22          He also filed two affidavits. Did not  
23          raise any Fifth Amendments with regard to  
24          the statements and facts that he alleged in  
25          those affidavits, one in 2013; and then the

1 most recent, 2013.

2 There's a pending motion to strike the  
3 2017 set for these pending motion hearings.

4 There was never any type of attack on  
5 the 2013 affidavit and they are  
6 substantially the same.

7 The third issue about substantive  
8 testimony that my client gave that goes to  
9 the probable cause issue were the two  
10 depositions in which Mr. Scarola deposed  
11 Mr. Epstein. And that first one was  
12 March 17, 2010 -- and it's in the court  
13 file -- it was approximately three hours.  
14 And it's important, Your Honor, just if the  
15 Court would indulge me to read a few  
16 answers, because the point here is -- I  
17 should have started with this. If I may use  
18 the easel.

19 So really there were two categories of  
20 questions that were asked of my client by  
21 Mr. Scarola. Some pertain to Fifth  
22 Amendment, which he raised, and some pertain  
23 to the malicious prosecution action.

24 My client substantively answered in  
25 that March 17, 2010 deposition -- under the

1 column of malicious prosecution -- page 19,  
2 Mr. Scarola asked, "Your complaint in this  
3 action" -- he's referring to the malicious  
4 prosecution action -- "alleges that L.M.  
5 made claims for damages out of proportion to  
6 alleged damages. What does that mean?"

7 "It means what it says."

8 Mr. Scarola: "I don't understand it.  
9 Explain it to me."

10 Mr. Epstein substantively answered  
11 questions related to his probable cause for  
12 instituting the civil proceeding of  
13 malicious prosecution when -- "I believe  
14 that as part of the scheme to defraud  
15 investors in South Florida out of millions  
16 of dollars, claims of outrageous sums of  
17 money were made on behalf of alleged victims  
18 across the board, and the only way, in fact,  
19 Scott Rothstein sits in jail. And what I  
20 have read in the paper, claims that I  
21 settled cases for \$200 million, which is  
22 totally not true. She has made claims of  
23 serious sums of money, which is outrageous."  
24 He answers the questions, "Have you  
25 settled claims?" "Yes, I have."

1           Page 23 of the same deposition. My  
2           client substantively answers the probable  
3           cause question for why he brought -- and  
4           Your Honor asked the question -- why did  
5           Mr. Epstein file this malicious prosecution  
6           action? He told Mr. Scarola back in 2010 --  
7           on page 23, Mr. Scarola said, "Did Brad  
8           Edwards do anything that he shouldn't have  
9           done that forms the basis of your lawsuit  
10          against him?"

11                 "Yes, many things."

12                 "List them for me, please."

13                 "He has gone to the media out of, I  
14           believe, an attempt to gin up these  
15           allegations. He has contacted the media.  
16           He has used the media for his own purposes.  
17           He has brought discovery. He has engaged in  
18           discovery proceedings that bear no  
19           relationship to any case filed against me by  
20           any of his clients.

21                 "His firm, which he is the partner of,  
22           has been accused of forging a federal  
23           judge's signature."

24                 Those are but two -- just two that I  
25           have taken and the Court has indulged me in

1 reading substantive answers.

2 **THE COURT:** Believe me, I have read  
3 these over and over again. They're  
4 segregated in various motions that I have  
5 been privy to, and I also have read the  
6 transcript in full relative to Mr. Epstein's  
7 questions.

8 The point that I tried to make with  
9 Mr. Link was that, number one, if as a court  
10 as a system of jurisprudence, we simply rely  
11 upon the contentions of the now defendant in  
12 a malicious prosecution claim as to probable  
13 cause, then there would really be,  
14 essentially -- there would be no malicious  
15 prosecution claim that would be brought.

16 Secondly, I understand that it is the  
17 plaintiff's burden of proof. Now, if it's a  
18 pure legal question, the Court will deal  
19 with that accordingly. But at least for now  
20 we understand that it's the plaintiff's  
21 burden to prove as to probable cause.

22 The point that I made and tried to make  
23 with Mr. Link was if a defendant in a  
24 malicious prosecution claim -- and I think  
25 some of these cases speak essentially to

1           that issue -- takes the Fifth Amendment in  
2           similar types of cases, then the plaintiff's  
3           position will never really be made known,  
4           unless there's an introduction to some  
5           degree of the fact that to certain  
6           questions -- now graphic sexual questions,  
7           the likelihood is I am not going to allow  
8           those into evidence.

9           **MS. ROCKENBACH:** Understood.

10          **THE COURT:** I haven't heard from  
11          Mr. Scarola, so I don't want to suggest that  
12          I am prejudging anything. But there is a  
13          bar that we need to respect as it relates to  
14          the difference between relevant evidence and  
15          a 403. I get it.

16                 But at the same time, I think as the  
17          judge, as opposed to an advocate, and taking  
18          into consideration both sides' positions, I  
19          have to recognize that there is a definitive  
20          and direct correlation between the  
21          invocation of Fifth Amendment rights as to  
22          issues that would go to proof of probable  
23          cause relating to the plaintiff's claim, and  
24          not simply take Mr. Edwards' (sic)  
25          contentions at face value. Because in



1           circumstances, such as this one where the  
2           Fifth Amendment has been discussed -- and in  
3           the vast majority of cases has --

4           Did I misstate something?

5           **MR. SCAROLA:** Yes, sir. You said  
6           Mr. Edwards. You meant Epstein, I'm sure.  
7           So the record is clear, I thought it  
8           appropriate to correct that.

9           **THE COURT:** We have all made those  
10          mistakes. I knew it was going to happen. I  
11          apologize for it. I caught myself once  
12          before. I apologize.

13          Madam Court Reporter, could you just  
14          read back where I started with questioning  
15          Mr. Rockenbach, please?

16          (Thereupon, the requested portion of the  
17          record was read back by the reporter as  
18          above duly recorded.)

19          **THE COURT:** With the vast majority of  
20          cases that have dealt with this tension, the  
21          allowance on a limited basis of the  
22          invocation of the Fifth Amendment makes  
23          perfect sense, because logically it is a way  
24          for the plaintiff in the malicious  
25          prosecution claim -- Edwards -- to be able

1 to prove the case -- at least prove probable  
2 cause. It makes sense.

3 And if I can divine common sense from  
4 these cases, then I feel I have made some  
5 reasonably decent strides. But it makes  
6 sense. I don't know if you can really argue  
7 with that logic.

8 **MS. ROCKENBACH:** I don't, Your Honor.  
9 There's a caveat. We agree with the Court,  
10 and we would rely on two cases for this  
11 point, because we are talking about -- the  
12 reason I drew that line for Fifth Amendment  
13 and malicious prosecution is we're talking  
14 about whether Mr. Edwards can, in this  
15 malicious prosecution case, read questions  
16 to the jury that my client took the Fifth  
17 Amendment to and draw a negative inference  
18 therefrom.

19 The US Supreme Court in Baxter --  
20 that's the case -- that's the Fifth  
21 Amendment case -- it says, "It's key that  
22 there's independent evidence existing of the  
23 fact to which the parties refuse to answer."

24 That's one building block for this  
25 issue. The second building block is a

1 Fourth DCA decision called Frazier versus  
2 Security and Investments, 1993. What does  
3 Frazier tell us? Not only do we build off  
4 the US Supreme Court and say you have to  
5 have independent evidence in order to use  
6 this Fifth Amendment adverse inference, but  
7 Frazier says that this adverse inference is  
8 limited against parties when they refuse to  
9 testify in response to probative evidence  
10 offered against them. Probative evidence  
11 offered against them.

12 We looked at those three rings earlier.  
13 This lawsuit here is not the ring  
14 involving -- I am going to say them all  
15 wrong -- E.W., L.M. and Jane Doe. It's not.  
16 This is the malicious prosecution ring and  
17 suit.

18 So the reason I read some excerpts from  
19 Mr. Epstein's deposition to Your Honor is to  
20 show that he didn't take the Fifth Amendment  
21 on issues relevant to why he filed the  
22 malicious -- why he filed his civil  
23 proceeding, the underlying suit for this  
24 malicious prosecution case against  
25 Mr. Edwards. He substantively answer those

1 questions.

2 What he didn't answer were questions  
3 that would fall in the Fifth Amendment  
4 column that would be relevant in those three  
5 claimants' lawsuits or claims or criminal  
6 action.

7 In that substantive three-hour  
8 deposition taken of my client, he was asked,  
9 "How many children have you sexually  
10 abused?" Have you ever sexually abused  
11 children? Have you ever socialized with --  
12 and then he was asked about public  
13 figures -- the governor of New Mexico?

14 "On how many occasions did you solicit  
15 prostitution? How many prostitutes do you  
16 contend you solicited? How many minors have  
17 you procured for prostitution. These are  
18 questions -- How many times did you engage  
19 in oral sex with females under age 18?"

20 These have no relevance to the  
21 malicious action. And those are the very  
22 questions that we are asking Your Honor to  
23 not only preclude from being admitted to --  
24 into evidence or any reference in the  
25 malicious prosecution, but also to preclude

1 Mr. Edwards from using the Fifth Amendment  
2 right against self-incrimination when those  
3 very questions have, A, no probative value  
4 in this lawsuit, no probative evidence,  
5 whatsoever; and B, there is no independent  
6 evidence --

7 **THE COURT:** I knew you all worked very  
8 hard in having produced these materials, and  
9 you all got involved somewhat late in the  
10 game, but what I didn't get is a definitive  
11 list of questions and answers that are  
12 sought to be excluded.

13 Globally, as I indicated, and thus far,  
14 my inclination is not to allow those types  
15 of questions to be asked of Mr. Epstein or  
16 to be utilized as -- to be published to the  
17 jury.

18 However, questions that deal with the  
19 fact that suits were brought against  
20 Mr. Epstein by at least the three people  
21 that were brought -- other suits that were  
22 brought against Mr. Epstein either by minors  
23 or by women of age that were actually filed  
24 or claims that were made and were paid by  
25 Mr. Epstein, those types of questions, I

1 believe, are going to be of probative value,  
2 which is essentially relevance, defined as  
3 tending to prove or disprove a material  
4 fact.

5 What's the material fact? You can  
6 answer it or I will answer it.

7 **MS. ROCKENBACH:** I have a question for  
8 Your Honor. But go ahead.

9 **THE COURT:** What I would perceive to  
10 being the probative issue or the relevance  
11 gets to why Mr. Epstein brought this claim  
12 in the first place. A basic question, as I  
13 mentioned before, that the jury is going to  
14 have and the Court has, and for them to be  
15 hamstrung from asking those questions, flies  
16 in the face, as far as I'm concerned, of the  
17 majority of the cases that I have read that  
18 touch on these types of cases. They may not  
19 be a specific malicious prosecution case,  
20 but the logic still is maintained. You see?

21 It can be differentiated -- some of  
22 these graphic questions that I'm not going  
23 to repeat here, but are a matter of public  
24 record and are in the materials far more  
25 graphic than what you have given us as

1           exemplars -- and I respect the fact that you  
2           didn't need to bring those into the record  
3           today.

4           But what I am saying is that it goes  
5           back into the logic that I described  
6           earlier.

7           **MS. ROCKENBACH:** Your Honor mentioned  
8           two categories --

9           **THE COURT:** And I'm not -- excuse me  
10          for a moment. I apologize for that. But  
11          I'm not trying to be definitive as far as  
12          the categories that are going to be or not  
13          be allowed. What I'm trying to give you is  
14          some type of global perspective, because, as  
15          I said before, unfortunately, whether it's  
16          time or whatever it may have been, the  
17          questions, to my knowledge, have not been  
18          segregated out. So as to go through on a  
19          question-by-question basis, yes or no. That  
20          may have to be done at a later time.

21          But what I'm trying to do is indicate  
22          to you that from a jury perspective, they  
23          are going to need to know what fueled  
24          potentially, Mr. Epstein. Was it what he  
25          says, or at least from a circumstantial

1           standpoint, and based upon his refusal to  
2           answer questions germane to those three  
3           pseudonym -- the pseudonyms used by those  
4           plaintiffs and others who have brought  
5           claims -- I don't think those three cases,  
6           to my recollection, were the only three  
7           cases that were brought -- maybe by  
8           Mr. Edwards.

9           **MS. ROCKENBACH:** They were the only  
10          ones brought by Mr. Edwards. And that leads  
11          me to the point -- I was going to jump back  
12          with Your Honor and say, you identified two  
13          categories and you said it's potentially  
14          relevant and probative to discuss those  
15          three that were the three lawsuits and  
16          others.

17          **THE COURT:** Are you going to tell me  
18          that he -- part of -- Mr. Epstein did not  
19          bring any cases against any of the other  
20          lawyers? Is that what you're going to  
21          suggest?

22          **MS. ROCKENBACH:** Number one, that is  
23          true and correct and accurate. He did not.  
24          And those other cases -- any other claims  
25          that were not being represented by



1 Mr. Edwards, they have no relevance to  
2 Mr. Epstein's lawsuit that he brought in  
3 December of 2009.

4 **THE COURT:** You can argue that. I have  
5 no problem with that argument.

6 **MS. ROCKENBACH:** But, Your Honor, as  
7 you've recognized, Your Honor is the  
8 gatekeeper. And introducing evidence that  
9 has absolutely no probative value and no  
10 relevance would be very harmful,  
11 inflammatory and clearly prejudice my client  
12 from --

13 **THE COURT:** I understand the point.  
14 You can proceed.

15 **MS. ROCKENBACH:** Thank you, Your Honor.

16 **MR. LINK:** Your Honor, can I offer a  
17 suggestion based on what I have heard?

18 **THE COURT:** Any objection, Mr. Scarola?

19 **MR. SCAROLA:** No, sir.

20 **THE COURT:** Yes, sir.

21 **MR. LINK:** Your Honor raises a good  
22 point, which is, without the specific  
23 questions in front of you, it makes it more  
24 difficult.

25 And I do apologize. You're right. We

1 scrambled up until 10 o'clock the night  
2 before Thanksgiving.

3 **THE COURT:** That's why I wasn't  
4 criticizing anybody for not having --

5 **MR. LINK:** And we didn't take it that  
6 way, Judge.

7 But I do think it would be helpful for  
8 the Court and for the parties if we go  
9 through the questions and the answers --  
10 there's not that many of them, frankly --  
11 and have the Court make a ruling, because  
12 without doing it question by question from  
13 the depositions, you are giving this general  
14 guidance, but it doesn't help us get ready  
15 for the jury trial, Your Honor.

16 **THE COURT:** I agree. I agree. And I  
17 have no problem with that. We have set  
18 aside several days in order to deal with  
19 that.

20 But we can talk about the general  
21 theory of the utilization of the Fifth  
22 Amendment and how that is going to be  
23 presented to the jury. So let's go on and  
24 proceed further, please.

25 Thank you, Mr. Link.

1           **MR. LINK:** Thank you, Judge.

2           **MS. ROCKENBACH:** Thank you, Your Honor.

3           I have provided Your Honor with the law  
4           that really is central and core to your  
5           gatekeeping function under 90.401 and 403.  
6           And the point is that there's no probative  
7           evidence. These Fifth Amendment questions  
8           that were asked of my client --

9           **THE COURT:** No probative value.

10          **MS. ROCKENBACH:** No probative value.

11          And the Frazier -- the Fourth DCA says that  
12          even that adverse inference against parties  
13          when they refuse to testify in response to  
14          probative evidence offered against them.

15          If my client had taken the Fifth  
16          Amendment when Mr. Scarola asked a question  
17          about what did Mr. Edwards do to wrong you?  
18          How did he abuse his license to practice  
19          law, and my client said Fifth Amendment,  
20          absolutely, that is a question that would  
21          not only get read, it would get the adverse  
22          inference.

23          But the questions that were asked of my  
24          client have zero probative value and are not  
25          anything related to the issues of probable

1 cause in this action.

2 So I might suggest that since  
3 Mr. Scarola is the proponent of those  
4 questions and that evidence, that he would  
5 identify questions that he wants to present  
6 to which my client pled the Fifth.

7 Before I stop speaking, though, just  
8 one other point. Mr. Edwards wants to use  
9 my client's invocation of the Fifth  
10 Amendment as a gag order on the column of  
11 malicious prosecution answers, meaning, in  
12 one of his motions it's to strike the  
13 affidavit.

14 And to be clear to the court, we are  
15 not submitting an affidavit as testimony at  
16 trial. We wouldn't do that. But it is a  
17 blueprint for what my client would testify  
18 to, as is the complaint that my client filed  
19 against Mr. Edwards.

20 Those were the allegations and the  
21 facts and circumstances, which goes to  
22 probable cause that Mr. Epstein relied on in  
23 December of 2009. So Mr. Edwards is moving  
24 to strike the affidavit, and based on the  
25 Fifth Amendment, says that my client can't

1 use it sword and shield. My client is not  
2 using Fifth Amendment as sword and shield  
3 whatsoever.

4 In the example I gave Your Honor, that  
5 would be a sword and shield if my client  
6 refused to answer the question of why he  
7 filed the original proceeding against  
8 Mr. Edwards in December of 2009, why he  
9 instituted that action, Fifth Amendment,  
10 that would be a sword and shield, and they  
11 could get an adverse inference.

12 So part of my omnibus -- revised  
13 omnibus motion in limine and the response  
14 to, I think, Mr. Edward's motion to strike  
15 my client's affidavit, implicates the Fifth  
16 Amendment.

17 **THE COURT:** We will take up with the  
18 striking of the affidavit separately.

19 **MS. ROCKENBACH:** Okay.

20 **THE COURT:** I don't think --

21 **MR. SCAROLA:** That issue is moot. The  
22 affidavit is not going to come into  
23 evidence, obviously. It was moved to be  
24 stricken as support for a motion that has  
25 already been denied. So I don't know why

1 we're talking about striking the affidavit.

2 **MS. ROCKENBACH:** Good. Then it seems  
3 that it's moot by Mr. Edwards and we will  
4 move on. But we wanted to make sure that  
5 that testimony that's provided in the  
6 affidavit should not be under some type of  
7 gag order. My client should be able to  
8 testify as to what -- why he had probable  
9 cause.

10 **THE COURT:** My position, before  
11 Mr. Scarola mentioned its mootness, was that  
12 as long as the information that's set forth  
13 in the affidavit, which by the way -- and  
14 it's not uncommon -- as brilliant as both  
15 sides are, I didn't have a copy of the  
16 affidavit.

17 **MS. ROCKENBACH:** I apologize to the  
18 Court for that.

19 **THE COURT:** It's okay. While it may  
20 have been attached somewhere -- one other  
21 thing. I don't know why Mr. Scarola, from  
22 your office, I didn't receive any binder or  
23 anything else. I had to, last night, copy  
24 the replies and the responses to take home  
25 with me.

1           **MR. SCAROLA:** We work in a binder-free  
2 zone, Your Honor.

3           **THE COURT:** That's fine. But I do  
4 require -- because most -- as last night --  
5 most of my preparation is done at home. And  
6 I'm so tired of looking at computers that  
7 it's much easier for me to have the hard  
8 copies.

9           I know others are much more computer  
10 savvy when it comes to those kinds of  
11 things. But I just find it more comfortable  
12 to be able to have something in my hand and  
13 read it. If you can kindly go ahead and  
14 forward them to me so -- last night getting  
15 the responses and having my JA -- I commend  
16 her for staying as late as she did last  
17 night and getting all of that material and  
18 helping getting it all marshaled --

19          Again, I just wanted to gently remind  
20 you folks that I may do things differently  
21 than others in the sense that I still like  
22 to have hard copies and not to sit there in  
23 front of a computer later in the evening.

24          Anyway. Sorry I got off on that  
25 tangent.

1 Did you want to add anything else?

2 **MS. ROCKENBACH:** Yes, Your Honor. As  
3 part of that omnibus motion in limine, we  
4 somewhat moved on from the Fifth Amendment  
5 questions and answers, because I think  
6 Mr. Scarola may want to tee up for the Court  
7 what precise questions that he is seeking to  
8 admit and introduce into evidence, so that  
9 Your Honor can rule on each one. Perhaps we  
10 can take that up after lunch. I'm not sure  
11 if that works.

12 **THE COURT:** I would like to hear some  
13 of Mr. Scarola's arguments now. I would  
14 like to get into the global issue of the  
15 Fifth Amendment, as well as parameters that  
16 he believes are appropriate as it concerns  
17 the nature of the questions that are going  
18 to be sought to be introduced and the  
19 invocation of the Fifth Amendment and where  
20 we stand currently.

21 Because if I'm understanding correctly,  
22 because of the pendency of that federal  
23 lawsuit, essentially Mr. Epstein is going to  
24 be taking the same position now as he has in  
25 the past?



1           **MS. ROCKENBACH:** With regard to the  
2 Fifth Amendment?

3           **THE COURT:** Yes, ma'am.

4           **MS. ROCKENBACH:** Yes, Your Honor.  
5 That's correct. I want to make sure. But  
6 not with regard to any probable cause  
7 questions, like those that were asked in his  
8 depositions, to which he did not invoke the  
9 Fifth Amendment.

10           They were relevant questions to this  
11 action. He will not be invoking the Fifth  
12 as to those questions. But yes, consistent  
13 with the questions that were asked of him in  
14 his deposition, to which he invoked the  
15 Fifth, he will be doing that again.

16           **THE COURT:** And you're not, at this  
17 point -- because I know that the  
18 counter-plaintiff Edwards was concerned  
19 about retracting any of his Fifth Amendment  
20 invocations. That is not planned at this  
21 juncture?

22           **MS. ROCKENBACH:** That's correct, Your  
23 Honor.

24           **THE COURT:** So that obviates, then, the  
25 need for Mr. Scarola to redepose

1 Mr. Epstein?

2 **MS. ROCKENBACH:** Correct.

3 **THE COURT:** Mr. Scarola, thank you for  
4 your patience. You may proceed, sir.

5 Thank you, Ms. Rockenbach and Mr. Link,  
6 for your written and oral presentations.

7 **MR. SCAROLA:** Thank you very much, Your  
8 Honor. If you don't mind, I'm going to  
9 stand at the podium that says, Plaintiff.

10 Your Honor, there is a very fundamental  
11 disagreement between present counsel for  
12 Mr. Epstein and Mr. Edwards. You heard  
13 Mr. Link say -- and I think I took down the  
14 quote exactly -- we have never challenged  
15 that these three cases were legitimate  
16 cases.

17 Well, I can understand why it is that  
18 at this point in the litigation, Mr. Link  
19 wishes that they had never challenged that  
20 these three cases were legitimate cases.

21 But the fact of the matter is that  
22 Bradley Edwards was sued for ginning up,  
23 fabricating, constructing those three cases,  
24 and others, as a knowing participant in  
25 Florida's largest ever Ponzi scheme, that

1 is, there were two clearly identifiable  
2 allegations of wrongdoing contained within  
3 the complaint filed by Bradley Edwards.

4 He was alleged to have fabricated these  
5 cases. And it was alleged that the reason  
6 why he fabricated the cases was as a knowing  
7 participant in the Ponzi scheme.

8 I can provide the court -- and I will  
9 do that -- with a copy of the complaint that  
10 was filed in this action. We've highlighted  
11 various allegations in that complaint, Your  
12 Honor, that specifically include the  
13 assertions that Bradley Edwards was involved  
14 in manufacturing, fabricating, ginning up  
15 these claims.

16 In paragraph seven, it is alleged that  
17 L.M. was an essential participant in the  
18 scheme referenced in this complaint, by  
19 among other things, substantially changing  
20 prior written sworn testimony so as to  
21 assist the defendants, plural, in promoting  
22 their fraudulent scheme for the promise of a  
23 multi-million dollar recovery relevant to  
24 civil actions, defined below, involving  
25 Epstein, which was completely out of

1 proportion to her alleged damages.

2 If we go to paragraph 30, "By using the  
3 civil actions against Epstein as bait and  
4 fabricating settlements regarding same,  
5 Rothstein and others were able to lure  
6 investors into Rothstein's lair and bilked  
7 them of millions of dollars which, in turn,  
8 were used to fund the litigation against  
9 Epstein for the sole purpose of continuing  
10 the massive Ponzi scheme."

11 "The sole purpose of continuing the  
12 massive Ponzi scheme." These weren't  
13 legitimate claims. They were being used  
14 solely to fund the Ponzi scheme, according  
15 to the allegations.

16 Thirty-one. "As part of this scheme,  
17 Rothstein and the litigation team" -- and  
18 the litigation team is defined in the  
19 complaint as Brad Edwards.

20 Paragraph E: -- "utilized the judicial  
21 process, including, but not limited to,  
22 unreasonable and unnecessary discovery for  
23 the sole purpose of furthering the Ponzi  
24 scheme."

25 Forty. "Edwards filed amended answers

1 to interrogatories in the state court  
2 matters, E.W. and L.M., and listed  
3 additional high-profile witnesses that would  
4 allegedly be called at trial, including, but  
5 not limited to:" And then various  
6 individuals are identified.

7 And then paragraph 41. "The sole  
8 purpose of the scheduling of these  
9 depositions was, again, to pump up the cases  
10 to investors. There is no evidence to date  
11 that any of these individuals had or have  
12 any knowledge regarding RRA's civil  
13 actions."

14 **THE COURT:** For the record, that's a  
15 quote from paragraph 41, as opposed to  
16 argument.

17 **MR. SCAROLA:** Thank you. Sir. I'm  
18 sorry.

19 If we go to page 18 of the complaint,  
20 subparagraph H. "Rothstein" -- and again,  
21 this is a quote.

22 "Rothstein and the litigation team knew  
23 or should have known that their three filed  
24 cases were weak and had minimal value for  
25 the following reasons."

Those reasons are listed.

Again, questioning the legitimacy of the claims.

Page 21, paragraph 44. "The actions described in paragraph 42 above herein had no legitimate purpose in pursuing the civil" litigations (sic) "against Epstein, but rather were meant to further the fraudulent scheme and criminal activity of Rothstein."

Paragraph 46, the last line. "RRA and the attorneys in the civil actions" --

Please remember, the civil action is a defined term in the complaint. It's L.M., E.W. and Jane Doe's claims -- "needed to create a fiction that included extraordinary damages. However, the actual facts behind her action would never support such extraordinary damages."

Going down to the last sentence in subparagraph A. "Under the circumstances, her claim for damages against Epstein, one of L.M.'s many johns during that same period, would be so incredible and certainly not likely to produce the extraordinary settlements promised to RRA's investors."

1 Paragraph 49 of page 27, second  
2 sentence. "Rather than evaluating and  
3 resolving the cases based on the merits,  
4 that is, the facts, which included  
5 knowledgeable, voluntary and consensual  
6 actions by each of the claimants and  
7 substantial pre-Epstein psychological and  
8 emotional conditions," et cetera.

9 So again, the allegation is that these  
10 children were knowledgeable, voluntary and  
11 consensual participants.

12 **THE COURT:** Let me ask you this. My  
13 memory is good, but not great. The three  
14 litigants that Mr. Edwards represented and  
15 perhaps still represents -- L.M., E.W. and  
16 Jane Doe -- were they all allegedly  
17 underaged at the time of these encounters?

18 **MR. SCAROLA:** Yes, sir, they were. So  
19 that obviously, as a matter of law, they  
20 were incapable of consenting.

21 The last sentence I want to reference  
22 in this case, Your Honor, appears at page  
23 30. The last sentence in paragraph 52, in  
24 order to continue to bring in moneys from  
25 investors, Rothstein and other

1 co-conspirators used the civil actions  
2 against Epstein, along with other  
3 manufactured lawsuits, as a means of  
4 obtaining massive amounts of money."

5 So when opposing counsel tells you, We  
6 have never challenged that these three cases  
7 were legitimate, again, while I understand  
8 why they wish that were true, that is not  
9 true.

10 And when Mr. Epstein was deposed in  
11 this action, Mr. Epstein was asked about  
12 what he meant when he testified that these  
13 cases were ginmed up. And what he said  
14 was -- referring to L.M., E.W. and Jane  
15 Doe -- what he said was, Well, when I said  
16 ginmed up, I meant manufactured, fabricated  
17 cases.

18 And the assertion is made that he never  
19 asserts the Fifth Amendment with regard to  
20 matters that are relevant to probable cause,  
21 as to whether he had a legitimate basis to  
22 claim that Bradley Edwards fabricated these  
23 cases.

24 Page 34, the deposition of March 17,  
25 2010 at line 23, quote, Specifically, what



1 are the allegations against you which you  
2 contend Mr. Edwards ginned up?

3 Answer: "I would like to answer that  
4 question. A, many of the files and  
5 documents that we've requested from  
6 Mr. Edwards and the Rothstein firm are still  
7 unavailable.

8 "With respect to anything that I can  
9 point to today, I'm, unfortunately, going to  
10 have to take the Fifth Amendment on that,  
11 the Sixth and Fourteenth."

12 Now, that's just one very obvious  
13 example where he's asked directly, what are  
14 the allegations that you claim in your  
15 complaint are ginned up, and he refuses to  
16 answer the question on basis of the Fifth  
17 Amendment privilege. There are many others.

18 And the question is posed, which  
19 questions do I want to place before the jury  
20 as to which Mr. Edwards -- excuse me, I did  
21 it -- to which Mr. Epstein has asserted the  
22 Fifth Amendment, and the answer is every  
23 single one of them.

24 **THE COURT:** And that's where we're  
25 going to have difficulty. As far as the

1 Court is concerned the case that -- strike  
2 that.

3 The question and answer that was just  
4 provided would be admissible. What we're  
5 talking about, Mr. Scarola, are questions  
6 that were cited in the motion and that the  
7 court has chosen not to read, that are of a  
8 graphic, sexual nature, and have, to my  
9 recollection, a general form of question, as  
10 opposed to specifics: Have you ever done  
11 certain things to minors? Have you ever  
12 been with prostitutes? Have you ever --  
13 things of that nature.

14 **MR. SCAROLA:** I don't recall that last  
15 question, but I understand the Court's -- I  
16 understand the Court's concern.

17 **THE COURT:** Ms. Rockenbach's question.  
18 Again, I know you understand it, but I  
19 want to make sure that the record is clear,  
20 and that's this. I have an obligation, as  
21 both sides are well aware, to ensure that we  
22 are working on a level playing field to the  
23 extent that it is possible.

24 I have the obligation, as  
25 Ms. Rockenbach points out, to be the

1 gatekeeper of evidence and to ensure to the  
2 best of my ability that we are not going to  
3 be engaging in pejorative name-calling types  
4 of questioning, nor are we going to get into  
5 inflammatory types of questioning just for  
6 the sole purpose of information.

7 Now, I know you wouldn't do that. But  
8 at the same time, as advocates, your  
9 respective positions have to be clear-cut in  
10 favor of your respective clients.

11 However, as I said earlier, it really  
12 becomes an issue of drilling down into the  
13 specifics before I can make rulings on the  
14 actual questions that are being sought to be  
15 introduced.

16 So the global aspect of the Court's  
17 decision at this time, until I look at the  
18 actual questions, is essentially this. And,  
19 that is, that I'm going to permit -- and  
20 we've already gotten a stipulation on the  
21 record by Mr. Epstein's counsel, which I  
22 appreciate -- that is, he's not going to be  
23 receding from his Fifth Amendment  
24 invocations. He's not going to be changing  
25 his testimony, so as to necessitate further

1           discovery as it relates to his testimonial  
2           evidence that has already been presented.

3           Therefore, those questions that deal  
4           with, for example, the question that you  
5           asked and answered, would be admissible.  
6           Those, because of the reasons that I stated  
7           earlier, would seem to make common sense to  
8           me and seems to be the thrust of the  
9           decisions of the court's, whether in Florida  
10          or outside of Florida -- the vast majority  
11          being outside of the state and some from the  
12          federal courts -- and, that is, that the  
13          Fifth Amendment cannot be used to take away  
14          Mr. Edwards' ability to prove his case or  
15          prove the probable cause element.

16          So to the extent that it would be  
17          needed to go in front of the jury, any  
18          questions that deal with the issue of  
19          Mr. Epstein's lawsuits brought by  
20          Mr. Edwards on behalf of the respective  
21          clients, would be germane. And any  
22          invocation, such as what was illustrated  
23          here, would be germane and relevant and  
24          found to be admissible. That's the core  
25          ruling of the Court.

1 Now, when it comes to issues of general  
2 graphic questioning, such as what has been  
3 exemplified by way of the  
4 counter-defendant's motion, those will not  
5 be permitted.

6 The closer question, and the one that I  
7 need to drill down further, is one of --  
8 because the complaint -- and I appreciate  
9 the fact that you brought this with you  
10 today and provided it to me -- because the  
11 complaint delineates the nature of the  
12 allegations -- at least from a summary  
13 perspective of the three claims -- how much  
14 are we going to be able to introduce, if  
15 those questions were asked? I haven't  
16 memorized the deposition testimony.

17 There were at least two depositions, if  
18 I'm not mistaken.

19 **MS. ROCKENBACH:** Yes, Your Honor.

20 **THE COURT:** Two depositions. I haven't  
21 memorized that testimony.

22 But since the complaint -- let me cite  
23 to you exactly where we are -- where I am  
24 alluding to here. Page 18 and it states,  
25 "Rothstein and the litigation team knew or

1       should have known that their three filed  
2       cases were weak and had minimal value for  
3       the following reasons."

4               Then it goes through "L.M. testified  
5       she had never had any type of sex with  
6       Epstein; worked at numerous clubs; is an  
7       admitted prostitute and call girl; has a  
8       history of illegal drug use" (pot,  
9       painkillers Xanax, Ecstasy); and continually  
10      asserted the Fifth Amendment during her  
11      depositions in order to avoid answering  
12      relevant but problem questions for her.

13             "E.W. testified she worked 11 separate  
14      strip clubs, including Cheetah, which RRA  
15      represented and in which Rothstein may have  
16      owned an interest. And E.W. also worked at  
17      Platinum Showgirls in Boynton Beach, which,  
18      as the subject of a recent police raid,  
19      where dancers were allegedly selling  
20      prescription painkillers and drugs to  
21      customers and prostituting themselves.

22             "Jane Doe (federal case) seeks  
23      \$50 million from Epstein. She and her  
24      attorneys claim severe emotional distress as  
25      a result of her having voluntarily gone to

1 Epstein's home. She testified that there  
2 was never oral, and/or sexual intercourse;  
3 nor did she ever touch his genitalia. Yet,  
4 Jane Doe suffered extreme emotional distress  
5 well prior to meeting Epstein as a result of  
6 having witnessed her father murder his  
7 girlfriend's son. She was required to give  
8 sworn testimony in that matter and has  
9 admitted that she lied in sworn testimony.  
10 Jane Doe worked at two different strip  
11 clubs, including Platinum Showgirls in  
12 Boynton Beach." End quote.

13 That's going to be a matter for further  
14 discussion, as far as what, if any,  
15 questions were related to those three  
16 individuals, and whether Mr. Epstein refused  
17 to answer those questions.

18 Because if he did refuse to answer  
19 those questions specific to those three  
20 individuals, then the likelihood is -- again  
21 without prejudging -- I haven't looked at  
22 those questions -- that I will admit those  
23 into evidence, because they relate directly  
24 to Mr. Epstein's claim in his deposition and  
25 his repeated claim that these cases were,

1 quote, ginned up, end quote, and had no  
2 merit until rather recently.

3 **MR. SCAROLA:** And in that regard, Your  
4 Honor, obviously, if the defense is going to  
5 take the position, as they have stated on  
6 the record now, that these were all  
7 legitimate claims, the extent to which we  
8 need to get into details with regard to what  
9 happened between Jeffrey Epstein and each of  
10 the three claimants against him is going to  
11 be very different than if they persist in  
12 challenging the legitimacy of the claims.

13 Now, if they do that, if they are  
14 continuing to challenge the legitimacy of  
15 the claims, despite the on-the-record  
16 announcement that's just been made, this is  
17 going to be a very different trial than if  
18 they come in and say, In spite of the fact  
19 that Jeffrey Epstein alleged that Bradley  
20 Edwards fabricated these claims, we no  
21 longer take that position. We recognize the  
22 fact that these were, indeed, legitimate  
23 claims, very valuable legitimate claims. So  
24 valuable that we settled them for \$5.5  
25 million in combination. And extremely



1           valuable claims because of the punitive  
2           damage exposure that Mr. Epstein confronted.

3           How much we need to prove is dependent  
4           upon how much is contested.

5           I doubt that they are going to concede  
6           punitive damage liability.

7           **THE COURT:** Where are we on that? Has  
8           there been a ruling on the punitive damage  
9           claim?

10          **MR. SCAROLA:** We have an amended  
11          permitted by the Court. There is a punitive  
12          damage claim pending against Mr. Epstein.

13          There are pending issues with regard to  
14          the implications of Fifth Amendment  
15          assertions with regard to issues concerning  
16          net worth, because among the questions he's  
17          refused to answer are any questions relating  
18          to his net worth.

19          **THE COURT:** Okay. But there is a  
20          current punitive damage claim?

21          **MR. SCAROLA:** Absolutely. Yes, sir.

22          **THE COURT:** I just want to make sure.  
23          The way it was written, it was a little bit  
24          cryptic in terms of pending. I didn't know  
25          if it was still a motion that needed to be

1 heard in that regard. That's all been taken  
2 care of.

3 **MR. LINK:** I think Judge Crow entered  
4 that order, Your Honor.

5 **MR. SCAROLA:** All over but the jury  
6 verdict.

7 Your Honor, in the 10 minutes or nine  
8 minutes now that I have left before lunch, I  
9 want to go through something that I think  
10 will be helpful to the Court.

11 In resolving some of the issues that  
12 Your Honor has focused on, which clearly are  
13 issues of concern with regard to how  
14 probable cause is proven in the context of a  
15 Fifth Amendment assertions on the part of  
16 the defendant who won't talk about some  
17 elements --

18 **MR. LINK:** Mr. Scarola, may I interrupt  
19 for one second? Do you mind?

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

21 **MR. LINK:** Judge, I want to make sure  
22 this is clear, because I thought I stated  
23 this very clearly, but sometimes what comes  
24 out of my mouth isn't what's in my head.

25 **THE COURT:** It's okay. Go ahead.

1           **MR. LINK:** Which is, I believe I very  
2 clearly said that we have never taken the  
3 position that during the time that  
4 Mr. Edwards was a sole practitioner, when  
5 these cases were filed up to the point that  
6 he joined Mr. Rothstein's firm, did we  
7 contend that he was doing anything that was  
8 inappropriate.

9           **THE COURT:** Okay.

10          **MR. LINK:** During the time that he was  
11 at the Rothstein firm -- if you will read  
12 the complaint -- everything that Mr. Scarola  
13 just read to you was all during the time he  
14 was employed at Mr. Rothstein's firm.

15               There is not an allegation in this  
16 complaint that relates to the time period  
17 from when they were filed until he joined  
18 Mr. Rothstein's firm.

19               That's a very significant distinction,  
20 because we are absolutely going to say that  
21 Mr. Rothstein himself was using --

22          **MR. SCAROLA:** I'm sorry. Could I  
23 finish my argument in the few minutes that  
24 are left before we hear rebuttal?

25          **THE COURT:** But it may be helpful to

1 hear what Mr. Link is trying to suggest so  
2 that you can formulate your argument.

3 **MR. SCAROLA:** I know exactly --

4 **THE COURT:** I will give him a minute.

5 **MR. LINK:** I don't want to take long.

6 I just want to clarify, because Mr. Scarola  
7 said that we have conceded that nothing was  
8 fabricated.

9 What was fabricated was not the filing  
10 of the three lawsuits in 2008. It was that  
11 there were other claims in addition to those  
12 three, and that one of these three settled  
13 for 30 million, and that Mr. Epstein had  
14 offered \$200 million. Those are the things  
15 that we were talking about during that time  
16 period.

17 **THE COURT:** Well, the allegation,  
18 though, in subparagraph H, which was already  
19 read into the record -- I will read it  
20 again, quote, Rothstein and the litigation  
21 team -- parenthetically Mr. Scarola has  
22 suggested that the litigation team is  
23 defined as Mr. Edwards -- returning to the  
24 quoted provisions -- knew or should have  
25 known that their three filed cases were weak

1 and had minimal value -- and for the reasons  
2 I have already gone through in addressing  
3 what I think is going to be relevant as to  
4 those three individuals if the contention is  
5 still that these claims were not legitimate  
6 during the period of time that Mr. Rothstein  
7 ad Mr. Edwards worked together.

8 **MR. LINK:** I just want to make this  
9 distinction. I don't want to beat this  
10 horse too much. If you look at the  
11 paragraph before that paragraph, it talks  
12 about the \$500 million settlement.

13 **THE COURT:** I will take that in  
14 consideration.

15 **MR. LINK:** So it's relative to that.

16 Second, Your Honor --

17 **MR. SCAROLA:** I'm sorry. I would like,  
18 in the few minutes remaining, to be able to  
19 make some points before --

20 **THE COURT:** Mr. Link, I am going to ask  
21 you, then, to save your commentary for  
22 rebuttal.

23 **MR. LINK:** I just was trying to answer  
24 your questions.

25 **THE COURT:** I didn't know I had a

1 question pending, but I appreciate it.

2 **MR. LINK:** My pleasure.

3 **MR. SCAROLA:** Your Honor, I have  
4 prepared an outline, which I hope is of some  
5 help to the Court in placing these issues in  
6 context.

7 The first thing that Your Honor needs  
8 to determine is the issue that we have been  
9 focusing on. What are the factual  
10 allegations that we claim were maliciously  
11 prosecuted against Bradley Edwards?

12 Now, what we have just heard is an  
13 effort to draw a distinction that is not  
14 drawn in the complaint. What we heard is we  
15 claim that the legitimate cases that were  
16 filed by Bradley Edwards while he was the  
17 sole practitioner somehow became  
18 illegitimate the moment he walked through the  
19 door of RRA. That's what we just heard.  
20 That just doesn't make any sense. That's  
21 not the allegation in the complaint.

22 The allegation in the complaint -- and  
23 as testified to by Mr. Epstein repeatedly in  
24 his deposition -- the allegation in the  
25 complaint is Bradley Edwards, quote, ginned

1 up these claims and he describes that as he  
2 crafted the complaints, he fabricated the  
3 complaints.

4 Now ginned up doesn't happen to appear  
5 in Merriam-Webster's dictionary. But there  
6 are sources that define ginned up.

7 The Oxford Dictionary says ginned up  
8 means to generate or increase something,  
9 especially by dubious or dishonest means.

10 The McMillan dictionary: To create, to  
11 generate, especially artificially or by  
12 dubious means.

13 The Free Dictionary: To create or  
14 produce.

15 So what we are alleged to have done is  
16 to have generated by dubious and dishonest  
17 means, claims on behalf of three individuals  
18 who really weren't victims for the sole  
19 purpose -- as Mr. Epstein repeatedly  
20 alleges -- for the sole purpose of  
21 supporting a massive Ponzi scheme, in which,  
22 as Your Honor as observed repeatedly -- and  
23 I will get to this in just a moment --  
24 Jeffrey Epstein could not possibly have been  
25 a victim. Didn't know about it. Didn't

1 know anybody involved in it. Didn't know it  
2 was going on until after it was over.  
3 Didn't spend a single penny investing in his  
4 own fabricated settlements.

5 And to the extent that he claims his  
6 damages are attorney's fees for what was  
7 going on while these cases were being  
8 prosecuted, Your Honor is very, very  
9 familiar with the litigation privilege, and  
10 knows that nothing that went on in the  
11 course of the prosecution of those cases,  
12 whether it was legitimate or illegitimate,  
13 can form the basis of a separate civil  
14 lawsuit.

15 Motion for contempt, motion to impose  
16 sanctions, 57.105 motion, bar complaint -- a  
17 lot of other remedies are available, but not  
18 a separate civil action, because he had to  
19 spend attorney's fees on what he claims were  
20 illegitimate discovery pursuits, which the  
21 evidence will show were totally and  
22 completely justified, and in many cases  
23 initiated long before Bradley Edwards ever  
24 became a member of RRA.

25 So, even if it were not already clear



1           that --

2           **THE COURT:** You are talking about the  
3           expenditure of attorney's fees?

4           **MR. SCAROLA:** Yes. That's correct.

5           Could not be damages. Just can't be as a  
6           matter of law.

7           Even if it were not already clear that  
8           Epstein alleged Brad fabricated the three  
9           cases he was prosecuting against Epstein,  
10          that's the only allegation that could  
11          possibly support a claim against Brad --  
12          because as I mentioned -- because of the  
13          litigation privilege.

14          But in addition to that, he suffered no  
15          damage from the Ponzi scheme. He didn't  
16          even know about it. Any action Brad took in  
17          the course of prosecuting those three cases,  
18          absolutely privileged.

19          And as a matter of law, it has been  
20          established in this case that there was no  
21          evidence to support those claims, because we  
22          filed a motion for summary judgment. On the  
23          eve of the motion for summary judgment,  
24          without ever having filed any opposition  
25          whatsoever, he voluntarily dismissed those

1 claims. That issue has been resolved.

2 So we must prove lack of probable cause  
3 as to either/or both of the two false  
4 claims. We have to prove Epstein did not  
5 have a reasonable basis to believe that Brad  
6 fabricated the three claims, and he didn't  
7 have reasonable basis to allege that Brad  
8 was a knowing participant in the Ponzi  
9 scheme.

10 How do we do that when there is a Fifth  
11 Amendment assertion? How do we prove what  
12 Epstein reasonably believed when he blocks  
13 relevant discovery with the assertion, not  
14 only of a Fifth Amendment privilege, but of  
15 a clearly legitimate attorney-client  
16 privilege as well?

17 And Your Honor has read the  
18 depositions. You know all of the relevant  
19 questions that were not answered with regard  
20 to attorney-client privilege are matched by  
21 the number of relevant questions to which he  
22 asserts attorney-client privilege as well.

23 So where do we go from there? And the  
24 answer --

25 **THE COURT:** Take about two minutes to

1 wrap up. I want to respect the fact that I  
2 have already allowed Ms. Rockenbach to leave  
3 at 11:45.

4 **MR. SCAROLA:** Yes. Thank you. I will,  
5 Your Honor.

6 The answer lies in a very fundamental  
7 presumption. And that fundamental  
8 presumption is every person is presumed to  
9 have intended the natural and probable  
10 consequences of his act. Very basic  
11 principle of law. It is cited specifically  
12 in the case that I have on this page. But  
13 it is a universal principal of law  
14 recognized in all American jurisdictions.

15 So, proof that Epstein filed a false  
16 claim against Bradley Edwards gives rise to  
17 the presumption that he intended to file a  
18 false claim against Bradley Edwards.

19 Florida statute 90.301 through 304 --  
20 those are three provisions of the evidence  
21 code -- talk about the effect of that  
22 presumption -- and I won't go into that now.  
23 I will wait until after lunch -- but,  
24 basically, this lays out the way this case  
25 is proved.

1           If we prove that these were not false  
2           claims, if we prove that Jeffrey Epstein  
3           knew they weren't false claims, because he  
4           was the one who physically participated in  
5           doing what he is alleged to have done, so he  
6           had to have known what he did -- once we've  
7           proven that, the presumption arises he  
8           intended to file knowingly false claims  
9           against Bradley Edwards and we have shifted  
10          the burden of proof to him to prove one of  
11          two things: the claims were true. That's a  
12          defense. The other defense is, Well, we  
13          know the claims were not true, but I  
14          reasonably believed them to be true at the  
15          time.

16               Thank you, sir. I will leave it right  
17          there.

18       **THE COURT:** Thank you, again, both  
19          sides for your excellent presentations.  
20          Thank you to our courtroom personnel as  
21          well.

22               What we are going to do is return at  
23          about 1:40. I have something that I need to  
24          do between the lunch, which I'm going to  
25          leave a little early and an errand I need

1 do. So come back at 1:40.

2 What I propose we will do is I will  
3 give you two hours this afternoon. We will  
4 go to about 3:40, and then proceed back with  
5 the remaining issues on the days that we  
6 have already set aside.

7 Again, thank you all very much for your  
8 courtesies. Have a pleasant lunch. We will  
9 reconvene at 1:40. We will be in recess.  
10 Thank you.

11 (A recess was had 11:48 a.m. - 1:44 p.m.)

12 **THE COURT:** Good afternoon, everybody.  
13 Welcome back. Okay let's go ahead and  
14 proceed then.

15 Mr. Scarola, you were in the midst of  
16 your PowerPoint.

17 **MR. SCAROLA:** Thank you, sir. Yes.  
18 Your Honor, just to recap the point at  
19 which we broke off, the defense has taken  
20 the position that the Baxter and Frazier  
21 cases stand for the proposition that the  
22 Fifth Amendment may not be the sole basis  
23 upon which a plaintiff rests its case to  
24 satisfy the burden of proof with regard to  
25 any element of the plaintiff's claim. We

1 don't take issue with that. That's good  
2 law.

3 You cannot determine from a Fifth  
4 Amendment adverse inference alone whether  
5 probable cause did or did not exist. And  
6 that's why I have reviewed with Your Honor  
7 what the other evidence is that both  
8 directly and circumstantially establishes  
9 that there was an absence of probable cause.

10 We begin with a point that one is  
11 presumed to have intended that which one  
12 did. And Jeffrey Epstein, when he filed  
13 claims demonstrated to be false, is presumed  
14 to have intended to file claims that were  
15 false.

16 We are not taking about malice yet.  
17 Independent of any evidence that relates to  
18 malice, we get to prove the truth of Brad  
19 Edwards' underlying claims on behalf of  
20 L.M., E.W. and Jane Doe.

21 So that then brings us --

22 **THE COURT:** I think I have already  
23 essentially ruled on that from a global  
24 standpoint. I am in agreement with you that  
25 any Fifth Amendment invocation as it

1       pertains to L.M., E.W. and Jane Doe --  
2       again, globally and without getting into  
3       graphic -- I intend to admit as being  
4       relevant.

5             You can proceed.

6             **MR. SCAROLA:** Thank you very much, Your  
7       Honor.

8             So we had broken off at this point  
9       where I began to talk about Florida Evidence  
10      Code sections 90.301 through 304. And I  
11      have a copy of those evidence code  
12      provisions that I will provide to the Court.  
13      I have provided them to opposing counsel as  
14      well.

15            **THE COURT:** Thank you.

16            **MR. SCAROLA:** These provisions focus on  
17      the shifting burden of proof, what a  
18      presumption does and what a presumption does  
19      not do. And I have underlined some sections  
20      here for Your Honor that I think are of  
21      particular significance in those three  
22      evidence code provisions.

23            And basically the gist of these  
24      evidence code provisions is that once we  
25      have proven that these were false claims,

1           once we have adduce proof that these were  
2           false claims, and take advantage of the  
3           presumption that the filing of knowingly  
4           false claims gives rise to one is presumed  
5           to have intended to do that, which one did,  
6           and presumed to have intended the natural  
7           and probably consequences of filing false  
8           claims, then the burden shifts.

9           And that's the point at which we broke  
10          for lunch, where I pointed out that, at that  
11          point, Mr. Epstein has every right to come  
12          in and say, now, Wait a second. You have  
13          put on evidence that these were false  
14          claims -- I mean, that these were valid  
15          claims, but I have the right to come in put  
16          on evidence that they were not valid claims.  
17          And he absolutely does.

18         **THE COURT:** I think that was the gist  
19          of my point I made earlier regarding the  
20          fact that we can't take it from one side  
21          only, and that if the proof is essentially  
22          within the invocation of the Fifth  
23          Amendment, i.e., the questions that were  
24          asked that would be pertinent to the issues  
25          of probable cause but refuse to be answered,



1 then Edwards should not be penalized because  
2 of that.

3 **MR. SCAROLA:** Yes, sir. And I  
4 certainly agree with it. And that's why I  
5 made the comment that it becomes significant  
6 when the defense stands up during the course  
7 of this argument and says we are not  
8 claiming that these were fabricated claims  
9 at the point in time at which Brad Edwards  
10 is a sole practitioner. We're claiming they  
11 became fabricated claims after he joined  
12 RRA. And then I guess what they're saying  
13 is they're unfabricated when he settled them  
14 for \$5.5 million.

15 If he wants to try to make that  
16 argument to the jury, that's fine. He can  
17 try to make that argument to the jury. I  
18 don't think it's going to go anywhere as a  
19 matter of fact, nor do I think it's going to  
20 go anywhere as a matter of law. But he can  
21 try it. He can try to say the valid claims  
22 got unvalidated and then got validated  
23 again, and I settled them for \$5.5 million.

24 At any rate, the burden does shift to  
25 him.

1 Now, he can also say that these were  
2 valid claims, but I reasonably believe them,  
3 mistakenly, but reasonably believed them to  
4 be invalid claims. I had probable cause to  
5 support my malicious prosecution claim,  
6 because I thought, mistakenly, but  
7 reasonably, that they were invalid claims.

8 Then we get to the fact that Epstein  
9 cannot reasonably believe what Jeffrey  
10 Epstein knows to be false.

11 And Jeffrey Epstein knows whether he  
12 molested these children or he didn't molest  
13 these children.

14 So if we prove that he molested them,  
15 he cannot contend he reasonably believed  
16 that he didn't molest them.

17 We proved that he knew the cases were  
18 not fabricated with proof that he actually  
19 molested L.M., E.W. and Jane Doe. We proved  
20 that these were not ginned up cases. These  
21 were not fabricated or created, not ginned  
22 up by proving that he settled them for \$5.5  
23 million, not while he was under some  
24 misapprehension about what these cases were  
25 all about, but after the Ponzi scheme was

1 fully and completely disclosed, after he  
2 read all of these news articles that he  
3 claims that he relied on -- or that his  
4 lawyers claimed he relied on, because he  
5 hasn't made those claims, but his lawyers  
6 have made those claims -- and we proved the  
7 cases weren't fabricated, with proof of his  
8 guilty plea to the molestation of children  
9 with his Fifth Amendment assertion, because  
10 his Fifth Amendment assertion at that point  
11 clearly is relevant and material, and an  
12 adverse inference can be drawn from that.

13 We proved that he did not have a basis  
14 to file these claims, because he fails to  
15 defend against the summary judgment,  
16 voluntarily dismisses the cases, and never  
17 refiles them.

18 No question about the fact that, at  
19 this point in time, there has been a bona  
20 fide resolution of his claims in favor of  
21 Bradley Edwards. And we proved the cases  
22 were not ginned up by proving similar fact  
23 evidence.

24 And Your Honor made some reference to  
25 this, but I want to be sure that we focus

1 specifically on this aspect of the case,  
2 because one of the things that the defense  
3 is attempting to exclude is any reference to  
4 anything other than L.M., E.W. and Jane Doe  
5 cases.

6 Your Honor suggested -- and I thought  
7 that I heard you correctly -- that evidence  
8 with regard to other claims actually filed  
9 against Epstein would be relevant and  
10 material. And clearly it is.

11 **THE COURT:** I believe what I said was  
12 those cases filed by Mr. Edwards or any  
13 claims that were made against Epstein by a  
14 client represented by Mr. Edwards.

15 Tell me why you think that the  
16 aggregate cases not having anything to do  
17 with Mr. Edwards' representation or  
18 Rothstein firm's representation -- because  
19 Mr. Berger, I think, was involved in some  
20 respects as well.

21 **MR. SCAROLA:** Co-counsel.

22 **THE COURT:** Solely as co-counsel -- I  
23 believe that to be the case -- are you  
24 suggesting that the aggregate cases would be  
25 relevant?

1           **MR. SCAROLA:** Yes, sir. And they are  
2 relevant for multiple reasons.

3           Your Honor will recall the chart that  
4 was put up by opposing counsel that  
5 attempted to summarize all of those things  
6 that Jeffrey Epstein could have reasonably  
7 relied upon to -- I guess what they're  
8 saying now is mistakenly conclude that Brad  
9 Edwards was part of this Ponzi scheme. And  
10 among those things that are referenced in  
11 that chart were Brad Edwards' efforts to,  
12 for example -- and this is only one  
13 example -- to take discovery from pilots  
14 about what was going on on Jeffrey Epstein's  
15 private planes when all of Brad Edwards'  
16 three clients acknowledged that they were  
17 not passengers on the planes.

18           And that is true. It is true that all  
19 of Brad Edwards' clients acknowledged that  
20 they were not passengers on Jeffrey  
21 Epstein's private jets. But both the  
22 Florida Evidence Code and Federal Rules of  
23 Evidence expressly permit -- the federal  
24 rules are very explicit about this --  
25 expressly admit the introduction of evidence

1 with regard to other child molestations in  
2 any child molestation claim.

3 **THE COURT:** So let's talk about that  
4 for a minute. Because again, what I don't  
5 want this to turn into is a case testing  
6 whether or not Epstein was an alleged serial  
7 child molester. It would not, in my view,  
8 pass muster legally, and I don't want to try  
9 this case twice.

10 I think that we should be extremely  
11 circumspect when it deals -- when we are  
12 dealing with global issues of molestation of  
13 graphic descriptions of any types of alleged  
14 molestation, except where we are dealing  
15 with claims that have been brought on behalf  
16 of those represented by Mr. Edwards.

17 The risk of error, if we go beyond that  
18 intended limitation, is significant. And I  
19 want to make sure that we, again, are  
20 focused on the elements of the claim. And  
21 whether it be for compensatory damages  
22 associated with Mr. Edwards' claim or  
23 punitive damages associated with  
24 Mr. Edwards' claim, we are still dealing  
25 with a malicious prosecution claim, solely a

1 malicious prosecution claim.

2 And so to deviate from that direction  
3 would be precarious and concerning to the  
4 Court, in particular, because when we're  
5 dealing with issue of probable cause, we're  
6 focusing on -- as I've made clear -- not  
7 only Mr. Epstein's stated intent, but I  
8 fully intend to allow circumstantial  
9 evidence, inclusive of the invocation of the  
10 Fifth Amendment relevant questions  
11 pertaining to the plaintiff's -- the  
12 counter-plaintiff's, more precisely --  
13 Mr. Edwards' position to explain to the jury  
14 why -- or to the Court -- why Mr. Epstein  
15 brought this claim, what were the true  
16 motivating factors concerning same.

17 To allow this to intrude into  
18 allegations of serial molestation is  
19 dangerous and is concerning.

20 You may proceed.

21 **MR. SCAROLA:** Thank you, Your Honor. I  
22 acknowledge the legitimacy of the Court's  
23 concern. And I recognize the fact that the  
24 Court, appropriately, under Rule 403, must  
25 balance probative value against prejudice.

1           However, as soon as Mr. Epstein takes  
2           the position, as he has in this  
3           demonstrative exhibit that --

4           **THE COURT:** Show me where, please.

5           **MR. SCAROLA:** Let's go through these  
6           and -- let me zoom in. On this top line are  
7           all of those circumstances subsequent to  
8           4/9/09 when Bradley Edwards became a member  
9           of Rothstein, Rosenfeldt & Adler, which  
10          Counsel says gave raise to a reasonable  
11          suspicion that Bradley Edwards was a knowing  
12          participant in the Ponzi scheme and was  
13          using fabricated claims to support that  
14          Ponzi scheme.

15          Let's take them one at a time.

16          Jane Doe move to unseal the  
17          non-prosecution agreement.

18          Now, the non-prosecution agreement is  
19          expressly referenced in the complaint, as is  
20          the Crime Victims' Rights Act case.

21          So if Jeffrey Epstein is going to say  
22          efforts to unseal the non-prosecution  
23          agreement contributed to his reasonable  
24          belief that Bradley Edwards was a knowing  
25          participant in the Ponzi scheme, we need



1 explain what the non-prosecution agreement  
2 was.

3 **THE COURT:** Okay.

4 **MR. SCAROLA:** And what the  
5 non-prosecution agreement was, was a deal  
6 that Jeffrey Epstein entered into with the  
7 federal government to avoid criminal  
8 prosecution for the molestation of  
9 approximately 40 children. Bradley Edwards  
10 was challenging the validity of  
11 non-prosecution agreement by filing a Crime  
12 Victims' Rights Act case, also referenced in  
13 the complaint.

14 **THE COURT:** So let's stop there for a  
15 minute and let's refocus ourselves on the  
16 motion that's before the Court. It's a  
17 motion in limine, particularly -- from this  
18 Court's perspective -- important as it  
19 relates to the invocation of the Fifth  
20 Amendment and attorney-client privilege,  
21 whatever that might amount to be.

22 If you ask Mr. Epstein -- or if you  
23 have asked Mr. Epstein a question regarding  
24 whether or not he was motivated to sue  
25 Mr. Edwards because in part of the move by

1 Jane Doe through Mr. Edwards -- as I  
2 understand, Mr. Edwards has been counsel.

3 **MR. SCAROLA:** Yes, sir. Pro bono  
4 counsel in that case for many years.

5 **THE COURT:** And you ask Mr. Epstein is  
6 it not true that you entered into this  
7 non-prosecutorial agreement because of X, Y  
8 and Z, I don't think there's a problem with  
9 that.

10 In other words, if he refuses to answer  
11 the question, then I think that can be  
12 admitted.

13 A question of whether you are a serial  
14 child molestation would fail the 403  
15 analysis in my view.

16 **MR. SCAROLA:** I'm sorry. If I led the  
17 Court to believe that that's what the  
18 question was going to be, then I wasn't  
19 communicating very well.

20 **THE COURT:** You have always  
21 communicated exceptionally well, so it could  
22 very well be my error.

23 So tell me what is the intent, then --  
24 do you recall the questions that have been  
25 asked, if any, regarding this particular NPA

1 that he failed to respond to at this point?

2 **MR. SCAROLA:** No, sir. I can't recall  
3 those offhand.

4 What I was addressing was not  
5 specifically a Fifth Amendment issue,  
6 although, I recognize the fact that this  
7 motion is supposed to be focused on the  
8 Fifth Amendment. But Your Honor, I thought,  
9 raised the question about whether we were  
10 going to get into the existence of other  
11 claims besides the claims of L.M., E.W. and  
12 Jane Doe. And that's what I was responding  
13 to.

14 I was pointing out that there is  
15 absolutely no way to avoid getting into the  
16 existence of those other claims, because  
17 Epstein has raised those issues in the  
18 complaint he filed against Brad Edwards.  
19 And he is relying upon those circumstances  
20 by virtue of the presentation that is being  
21 made during this hearing to suggest to Your  
22 Honor, One of the reasons why I had probable  
23 cause to believe that this was a maliciously  
24 prosecuted case against me was because of  
25 what went on after Brad Edwards joined RRA

1 in moving to set aside the non-prosecution  
2 agreement.

3 So if that's what he's telling you he  
4 intends to prove, I'm simply pointing out to  
5 Your Honor -- and I can go through this --  
6 and it's going to come up in almost every  
7 one of these elements. While I understand  
8 the Court's concern about trying to narrow  
9 the focus, the door has been blown off the  
10 hinges by Mr. Epstein's own complaint.

11 And his lawyers have taken that door  
12 and thrown it out the window when they  
13 argued to Your Honor that one of the reasons  
14 why we believe -- or Jeffrey Epstein  
15 reasonably believed that Brad Edwards was a  
16 knowing participant in the Ponzi scheme, is  
17 because he moved to set aside the  
18 non-prosecution agreement after he joined  
19 RRA.

20 Now, many aspects of this timeline --

21 **THE COURT:** I have to say, I really  
22 don't understand the connection, but I will  
23 give Mr. Link the opportunity to explain it  
24 to me.

25 **MR. SCAROLA:** Well, I'm not quite sure

1 I understand it either, but this is their  
2 exhibit. They are the ones that are saying  
3 this was the basis for our making this  
4 determination, or for Mr. Epstein reasonably  
5 believing that Brad Edwards was a knowing  
6 participant in the Ponzi scheme.

7 **THE COURT:** Just for the record, there  
8 was never a malicious prosecution claim  
9 filed by Epstein --

10 **MR. LINK:** There was not, Your Honor.

11 **THE COURT:** Abuse of process claim?

12 **MR. LINK:** Yes.

13 **THE COURT:** Just so that the record is  
14 clear.

15 **MR. SCAROLA:** Abuse of process claim.

16 **MR. LINK:** And, Your Honor, if I may  
17 just point out --

18 **THE COURT:** No, not right now, please.  
19 You will have ample opportunity to rebut.

20 **MR. LINK:** Thank you, Judge.

21 **THE COURT:** I don't want to get into  
22 what we did this morning.

23 **MR. SCAROLA:** So all I am responding  
24 to -- and maybe this isn't the appropriate  
25 time to do that -- is the idea that we are

1           able to sanitize this case to the point  
2           where we are not going to be talking about a  
3           variety of other claims that were being  
4           prosecuted by other plaintiffs' lawyers  
5           working together with Brad Edwards, and not  
6           going to be talking about the Crime Victims'  
7           Rights Act case, because as Your Honor has  
8           repeatedly acknowledged, motive is going to  
9           be very significant.

10           And we intend to prove that Jeffrey  
11           Epstein's motive in filing these knowingly  
12           false claims against Brad Edwards -- his  
13           motive was to extort Bradley Edwards into  
14           abandoning or cheaply compromising the  
15           rights of his clients, and abandoning his  
16           efforts through the Crime Victims' Rights  
17           Act case to set aside the non-prosecution  
18           agreement.

19           He had an enormous economic motive, if  
20           he could limit his civil exposure, and he  
21           had a tremendous motive, in terms of the  
22           criminal liability he faced. And the way he  
23           chose to address that was, I'm going to make  
24           an example out of Brad Edwards, who has  
25           taken a leadership role among all these

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

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

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

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

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

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

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

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

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

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

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

25          **THE COURT:** Sure.



1           **MR. SCAROLA:** The non-prosecution  
2 agreement is an agreement with the U.S.  
3 Attorney's Office for the Southern District  
4 of Florida. It extends immunity to  
5 Mr. Epstein and his unnamed co-conspirators  
6 for crimes committed in the Southern  
7 District of Florida.

8           So even if per chance the Crime  
9 Victims' Rights Act case were to go away  
10 tomorrow, which seems highly unlikely,  
11 Mr. Epstein will still have a valid right to  
12 assert a Fifth Amendment privilege. And I  
13 acknowledge that. I haven't challenged the  
14 validity of his Fifth Amendment assertion.

15           What we are talking about is not his  
16 right to assert it, it's the consequences of  
17 that assertion.

18           **THE COURT:** And to respectfully bring  
19 us back into focus on what's before the  
20 Court, generally, the invocation of the  
21 Fifth Amendment -- and bringing out the fact  
22 that the NPA in some form or fashion,  
23 because of it being a reason for the  
24 invocation of the Fifth Amendment -- is  
25 going to be mentioned during the trial.

1           There's no way around it.

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

3           **THE COURT:** Fine.

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

8           Not now. When you have your  
9           opportunity.

10          Mr. Scarola.

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

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

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

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

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

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

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

1 to prove what his motive is  
2 circumstantially.

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

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

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

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

1 L.M., because he felt that by doing this  
2 unsealing, it was motivation, it was  
3 exposure, it was public information so as to  
4 allegedly gin up these three claims held by  
5 the three plaintiffs with the initials and  
6 the Jane Doe.

7 **MR. SCAROLA:** Yes.

8 **THE COURT:** On the other hand, as I  
9 indicated, the reverse effect taking place  
10 would be Mr. Edwards' position that in fact  
11 the ill motive was the fact that -- and to  
12 file this lawsuit against Edwards and  
13 others -- was because Mr. Epstein was being  
14 exposed, if you will.

15 **MR. SCAROLA:** Poor choice of words.

16 **THE COURT:** Pardon me?

17 **MR. SCAROLA:** Poor choice of words.

18 That was a joke, Your Honor. A bad one.

19 **THE COURT:** That's okay. I understand.

20 So that's essentially what I'm  
21 understanding count -- point --  
22 counterclaim.

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

24 My only point is, we can't avoid  
25 getting into that. As soon as they raise

1 it, we can make the counterpoint. We can  
2 explain why it was done. And the same thing  
3 is true with regard to everything else that  
4 is on this list. The claim for  
5 \$50 million --

6 **THE COURT:** I'm not sure that they even  
7 have raise it for it to be relevant.

8 **MR. SCAROLA:** I don't think they do,  
9 because we have an obligation to prove our  
10 case. We get to prove malice.

11 **THE COURT:** Well, I am even talking  
12 about probable cause.

13 **MR. SCAROLA:** And probable cause. Yes,  
14 sir. I agree. We can prove probable cause.  
15 We can prove what Mr. Epstein knew. We can  
16 prove his motives, and we can prove malice  
17 as part of proving probable cause.

18 But I don't think it's necessary to  
19 ever parse out is this relevant to probable  
20 cause only, is it relevant to malice only.  
21 If it's relevant to one or the other it  
22 comes in.

23 **THE COURT:** And the 40 individuals that  
24 you are contending and that's the subject to  
25 this NPA are all minors?

1           **MR. SCAROLA:** Yes, Your Honor.

2           And what the federal law says is  
3           \$150,000 per molestation. That's what the  
4           federal law says. And what the NPA says is  
5           if these claim are brought pursuant to the  
6           federal statute, you are not going to  
7           contest your liability.

8           Now, what they did contest is whether  
9           it's 150,000 per molestation, or 150 cap.  
10          So once you pay the 150,000 you get to  
11          molest these kids as many times as you want  
12          to.

13          **THE COURT:** Per claim?

14          **MR. SCAROLA:** Yes. So that was an  
15          issue. But that's the reason why -- and the  
16          jury is going to need to hear this -- why  
17          does Brad Edwards file a 256-page -- or 256-  
18          paragraph -- whatever it is -- or 256  
19          counts --

20          **THE COURT:** 254-page --

21          **MR. SCAROLA:** Whatever it is. Why does  
22          he file this lengthy federal case? Was that  
23          really as an effort to try to gin up these  
24          cases for purposes of participating in a  
25          Ponzi scheme, or was there an independent

1 legitimate basis for doing what he did?

2 **THE COURT:** Of course, the interesting  
3 part of that is from the timeline, the  
4 complaint filed -- the federal complaint,  
5 234-page federal complaint was filed after  
6 the settlement of three cases.

7 **MR. SCAROLA:** No, sir. I don't think  
8 so.

9 **MR. LINK:** No.

10 **THE COURT:** I thought that the  
11 settlement was 7/6 -- I'm sorry. My bad. I  
12 was reading '09. The 7/27/09, and then  
13 7/6/10. That was my error.

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

15 And you may recall -- we have already  
16 made reference to the timing of the filing  
17 of that federal case that we were obliged to  
18 file within two years after L.W. coming of  
19 age. She was about to celebrate her 20th  
20 birthday and it needed to be filed within  
21 that time.

22 **THE COURT:** There were statute of  
23 limitations issues. Again, another  
24 counterpoint.

25 **MR. SCAROLA:** Exactly correct.



1 Absolutely.

2 I am only suggesting to Your Honor that  
3 it is very difficult to be able to say as a  
4 blanket matter, I am not going to let in  
5 evidence of these other claims.

6 **THE COURT:** Again, I am not taking that  
7 position yet. What I'm saying is that on a  
8 matter-by-matter basis -- and we are using  
9 Mr. Epstein's timeline and those pertinent  
10 events, which are noted therein -- if there  
11 were questions that relate to the NPA that  
12 were asked of Mr. Epstein and he did not  
13 answer based on Fifth Amendment grounds, the  
14 inclination -- again, without reading  
15 question by question, would be to allow that  
16 in, subject again, to the issue of multiple  
17 claimants, if you will, the 40 minors that  
18 you represented to the Court.

19 But again, when we look at it from the  
20 standpoint of both sides, trying to balance  
21 this as best I can under 403, on the one  
22 hand we have Mr. Edwards taking -- strike  
23 that -- Mr. Epstein taking the position that  
24 doing what was done by Jane Doe through  
25 Mr. Edwards as counsel was an attempt to

1 publicize and to sensationalize the  
2 circumstances so as to increase the value of  
3 at least the claims that were held by the  
4 Rothstein firm.

5 **MR. SCAROLA:** Which I think is what  
6 every lawyer is supposed to do within the  
7 bounds of propriety, obviously. But our job  
8 is to maximize the value of our clients'  
9 claims.

10 **THE COURT:** And on the other side of  
11 the coin is Mr. Edwards taking the position  
12 that the impetus -- or an impetus for filing  
13 the complaint at bar was the exposure of  
14 Mr. Epstein, once again, to the ignominy of  
15 having to face the publicity of a  
16 non-prosecutorial agreement where there were  
17 admissions, where there were agreements --  
18 perhaps not admissions -- but agreements  
19 that limited the prosecution of him as it  
20 relates to multiple claimants or multiple  
21 potential victims.

22 So again, my ruling on that is if there  
23 are questions that have to do with this  
24 issue, globally they will be allowed to be  
25 asked subject to further argument as it

1 relates to the multiplicity of the numerous  
2 victims that we are dealing with here as  
3 alleged.

4 Same as it goes with this 234-page  
5 federal complaint. If there were any  
6 questions that were asked of Mr. Epstein  
7 where he refused to answer on Fifth  
8 Amendment grounds, I find that the  
9 information would be relevant. Therefore,  
10 his failure to answer would be -- would be  
11 able to be utilized if such questions were  
12 asked of him regarding the 234-page federal  
13 complaint filed on behalf of L.M. by  
14 Mr. Edwards.

15 **MR. SCAROLA:** Let me just clarify one  
16 point, and that is, we have been focusing on  
17 questions that have already been asked of  
18 Mr. Epstein. Obviously, we have the right  
19 to call Mr. Epstein as an adverse witness.  
20 We have the right to put him in that witness  
21 chair in front of the jury and to ask him  
22 questions that Your Honor has considered to  
23 be appropriate that may not have been asked  
24 at the time of his deposition.

25 So I want to make it clear that we

1 don't consider nor do I understand Your  
2 Honor to be ruling that we would only be  
3 limited to asking questions already asked of  
4 him in his deposition. We would be  
5 permitted to ask him any question relevant  
6 and material to the claims that he has made  
7 against Mr. Edwards, and that -- has been  
8 announced -- we know he will be invoking his  
9 Fifth Amendment right.

10 **THE COURT:** With the caveat and  
11 understanding that any reasonably sensitive  
12 type of question that is going to be  
13 construed as graphic -- reasonably construed  
14 as graphic -- going to be questions about  
15 global conduct should be run by the court  
16 first by way of a proffer.

17 **MR. SCAROLA:** I understand the Court's  
18 concern. And I --

19 **THE COURT:** I am very, very cognizant  
20 of the fact that we are going to be spending  
21 a significant amount of time both pretrial  
22 and at trial. And I do not want to get into  
23 a circumstance where we are going to be  
24 taking liberties at the expense of ensuring  
25 that a fair trial is provided to all.

1           **MR. SCAROLA:** I am happy to make the  
2           commitment to the Court, because I  
3           understand your concern, and I recognize the  
4           sensitivity of these issues.

5           **THE COURT:** Thank you.

6           **MR. SCAROLA:** I will make a commitment  
7           to the Court that we will proffer in advance  
8           any question that we reasonably anticipate  
9           will invoke a Fifth Amendment privilege.

10          **THE COURT:** All right. Let's move on  
11          then. Again, let's refocus back to some of  
12          these issues that are directly before the  
13          Court.

14          **MR. LINK:** Your Honor, can I just  
15          clarify, because I don't want that to leave  
16          untouched and it's this. May I, Your Honor?

17          **THE COURT:** Briefly.

18          **MR. LINK:** Thank you. Very briefly.  
19          I want to be clear that we have not  
20          heard the questions, so I can't tell you,  
21          without knowing what the question is,  
22          whether we will raise the Fifth Amendment or  
23          not. My commitment to the Court was the  
24          questions that were asked already were not  
25          going to change the assertion of the Fifth.

1           **THE COURT:** I think that was a caveat  
2 to Mr. Scarola's recitation.

3           **MR. LINK:** Thank you, Your Honor.

4           **THE COURT:** Again, it is with the same  
5 caveat that I explained earlier, and that  
6 is, I am going to have both sides provide me  
7 with questions that -- well, really it would  
8 start with Mr. Edwards and Mr. Scarola  
9 providing your side with questions -- the  
10 specific questions that were asked that  
11 Mr. Scarola in good faith believes he will  
12 be asking at trial that have already been  
13 subject to invocation of the Fifth Amendment  
14 and/or attorney-client privilege or any  
15 other privilege, for that matter.

16           All I've see are Fifth Amendment and  
17 attorney-client privilege. There may have  
18 been a Fourteenth amendment or another  
19 amendment.

20           **MR. SCAROLA:** Those questions will be  
21 elicited through Mr. Epstein's deposition,  
22 Your Honor.

23           **THE COURT:** So what I'm trying to --  
24 again, give you global guidance as to how  
25 the Court intends to rule on some of these

1 issues, but at the same time reserving the  
2 ability to be able to review the specific  
3 questions that, with the Court's global  
4 guidance today, are still subject to debate  
5 as to whether or not they are going to be  
6 asked.

7 For example, Mr. Scarola may have a  
8 list of 30 questions that, after he has  
9 culled through the testimony, he intends to  
10 ask -- strike that -- he intends to publish  
11 before the jury by way of deposition  
12 utilization.

13 If you find that any or all of those  
14 questions are outside the parameters the  
15 court has provided to you today, then it  
16 will be incumbent upon you to bring those  
17 before me and to --

18 **MR. LINK:** Judge, I understand. That's  
19 a fair procedure.

20 **THE COURT:** -- and I will entertain  
21 further argument or I may not entertain  
22 further argument. I may just rule on it  
23 pursuant to the law that I have and what I  
24 perceive to be the appropriate rules of  
25 evidence.

1           **MR. LINK:** Understood. That procedure  
2 is very clear to me.

3           **THE COURT:** So let's go back now -- I  
4 want to give Mr. Scarola his opportunity --  
5 is there anything else specifically that we  
6 need to talk about now on Fifth Amendment  
7 issue? Because most of these other exhibit  
8 matters, we can handle those -- we can  
9 handle them today, if you'd like to. But we  
10 don't need to handle them in conjunction  
11 with the Fifth Amendment issue.

12           Things like massage tables and messages  
13 from notepads in Epstein's homes, flight  
14 logs, things of that nature, don't really  
15 get into necessarily Fifth Amendment issues.

16           **MR. LINK:** We agree.

17           **THE COURT:** So why don't you go ahead,  
18 Mr. Link. I want to give you an opportunity  
19 to rebut.

20           **MR. SCAROLA:** Your Honor asked if there  
21 were other specific matters relating  
22 directly to Fifth Amendment, and the  
23 financial discovery raises Fifth Amendment  
24 issues that need to be discussed.

25           **THE COURT:** Okay. We can do that after



1 we get finish with Mr. Link's rebuttal on  
2 the global Fifth Amendment issues that we've  
3 dealt with thus far. Thank you.

4 **MR. LINK:** Okay, I'm going to pick up a  
5 couple of pieces of -- Your Honor, I just  
6 want to touch on a couple of pieces of the  
7 presentation, then I will go back to where I  
8 want to go.

9 You asked about this timeline, and it  
10 doesn't say that it had anything to do with  
11 setting aside the NPA. This timeline says  
12 this: Jane Doe moved to unseal the NPA.  
13 And the reason that that caught  
14 Mr. Epstein's attention was because  
15 Mr. Edwards and Jane Doe already had it.  
16 They had a copy of the NPA, so why would  
17 they want it to be unsealed?

18 **THE COURT:** For the same reasons that  
19 we discussed earlier -- Mr. Scarola was  
20 rather blunt about it -- and that is, that  
21 doing that will enhance the value of the  
22 claims made by the three pseudonym  
23 plaintiffs.

24 **MR. LINK:** Maybe.

25 **THE COURT:** It may be. And I grant you

1           that. But it also could inflame  
2           Mr. Epstein, potentially, as well. It also  
3           could provide Mr. Epstein with bona fide  
4           good faith motivation that he thought that  
5           this was resolved and now it's being opened  
6           up again, so I can see both sides.

7           **MR. LINK:** No question. That's what  
8           takes us to the Fifth Amendment and what  
9           we're talking about. And that's this.  
10          Everything that was just discussed has to do  
11          with the truth -- with the truth of the  
12          allegations that are contained in Epstein's  
13          complaint against Mr. Edwards.

14          What Mr. Scarola wants to do and what  
15          Mr. Edwards told us in his deposition, is  
16          they want to show the world that those  
17          allegations were untrue.

18          **THE COURT:** Which allegations?

19          **MR. LINK:** The allegations Mr. Epstein  
20          filed against Rothstein and Edwards.

21          **THE COURT:** That the allegation as it  
22          relates to the claims by the three pseudonym  
23          plaintiffs?

24          **MR. LINK:** No, sir.

25          **THE COURT:** Start again. I am not

1 following you.

2 **MR. LINK:** So there was a lawsuit filed  
3 by Mr. Epstein. He sues Rothstein and he  
4 sues Edwards.

5 **THE COURT:** And L.M.

6 **MR. LINK:** And L.M. In that claim, if  
7 you read it fairly, you will not find an  
8 allegation that says that the three  
9 plaintiffs Mr. Edwards represented  
10 fabricated their claims. What you will  
11 find, Your Honor, when you read it is that  
12 it says that those three cases were used to  
13 entice investors to invest in other cases.

14 They also say in this complaint, very  
15 clearly, that those three cases -- those  
16 three cases, the value of them -- the  
17 value -- not the legitimacy of filing  
18 them -- the value.

19 **THE COURT:** That's not what it says.  
20 Paragraph H, which I will read for a third  
21 time says, quote, Rothstein and the  
22 litigation team -- which I'm assuming that  
23 included Mr. Edwards -- knew or should have  
24 known that their three filed cases were weak  
25 and had minimal value for the following

1 reasons.

2 **MR. LINK:** Yes. I agree with that.

3 And I think any questions about that --  
4 right -- any questions about that would go  
5 to whether that statement is true. But it  
6 doesn't say -- it says they were weak. It  
7 doesn't say that they were ginned up. It  
8 doesn't say they were fabricated. It  
9 doesn't say any of the words that  
10 Mr. Scarola told you it said. It said that  
11 they should have known -- remember what I  
12 said, it follows the \$500-million-settlement  
13 paragraph. And if you relate it to the  
14 \$500 million, it says they should have known  
15 that these cases weren't worth \$500 million.

16 But it does not say anywhere in this  
17 complaint that Mr. Edwards fabricated those  
18 three cases in 2008. It doesn't say that  
19 anywhere. It doesn't say it anywhere.

20 I absolutely agree -- I absolutely  
21 agree it says they were used by Rothstein to  
22 attract investors. Rothstein lied about  
23 those cases.

24 Mr. Edwards candidly told us in his  
25 deposition that Rothstein used his cases --

1 Mr. Edwards' cases -- and fabricated claims  
2 about them in settlements.

3 **THE COURT:** And the point is what?

4 **MR. LINK:** The point is this. What  
5 Mr. Scarola wants to try to the jury is this  
6 case right here. He wants the jury to hear  
7 the case that settled, these three folks to  
8 get on the stand and say that they were  
9 physically abused when they were minors.  
10 And if that is true -- that's what he tells  
11 us -- plaintiff Edwards starts -- by proving  
12 the truth of the claims he brought on behalf  
13 of them.

14 If he does that, if he proves their  
15 underlying claims, he now has lack of  
16 probable cause. It's a disconnect, because  
17 lack of probable cause has to do with  
18 Edwards' (sic) state of mind at the time.

19 **THE COURT:** Edwards or Epstein?

20 **MR. LINK:** Epstein. We have all done  
21 it four times.

22 Epstein. Epstein's state of mind, and  
23 only his state of mind. I am competent if  
24 this case was tried -- this is the Epstein  
25 versus Rothstein and Edwards -- that

1 Mr. Edwards will get on the stand, and he  
2 would tell the jury all the reasons why he  
3 did what he did. And they may believe him.  
4 But whether he had a legitimate reason or  
5 not isn't relevant to whether Epstein had  
6 probable cause.

7 **THE COURT:** Let's focus on the Fifth  
8 Amendment issues.

9 **MR. LINK:** Well, that's why it's  
10 important, because if you asked Mr. Epstein  
11 a question -- if you asked him a question  
12 that goes something like this, Did you touch  
13 E.W.? And sanitize it. Don't put anything  
14 graphic. Did you touch E.W.? what does that  
15 question -- it would be relevant here. He  
16 asserts the Fifth, relevant to this case  
17 (indicating), Judge. He asserts the Fifth.  
18 How is that relevant to the reasons in his  
19 head about why he decided to sue Rothstein  
20 and Edwards? How can it be relevant to  
21 that?

22 **THE COURT:** If you asking me, as  
23 opposed to being rhetorical, I can answer it  
24 simply.

25 **MR. LINK:** Both.

1           **THE COURT:** This is pre-settlement, the  
2 filing of this lawsuit at bar, okay?

3           **MR. LINK:** Yes.

4           **THE COURT:** His strike, if you will, is  
5 a preemptive one by virtue of filing this  
6 lawsuit.

7           **MR. LINK:** That could be his motive. I  
8 agree.

9           **THE COURT:** That's a simple answer.

10          **MR. LINK:** Well, but that goes to  
11 motive, not probable cause. Remember, the  
12 motive ties into the malice element.

13          **THE COURT:** I understand. But the  
14 plaintiff in the malicious prosecution  
15 claim, Mr. Edwards, has the ability, through  
16 direct and circumstantial evidence, to be  
17 able to put on a case as to what was  
18 Mr. Epstein's reason. Why did he do it? To  
19 contradict Mr. Epstein's contentions.

20          And, in my respectful view, one of  
21 those motives -- if you're asking me --  
22 which you have -- and you suggested that you  
23 have --

24          **MR. LINK:** I have. Go ahead. I need  
25 teaching all the time.

1           **THE COURT:** It's not teaching. It just  
2           a common sense logical thought that the  
3           reason why you bring a lawsuit like this  
4           that constitutes somewhere in the  
5           neighborhood of 35 pages where you are  
6           claiming after this -- shortly after this  
7           law firm blew up --

8           **MR. LINK:** Correct.

9           **THE COURT:** -- and everybody is  
10          scrambling; nobody knows what's going on;  
11          federal agents are raiding the offices;  
12          including, I presume, Mr. Edwards' office --

13          **MR. LINK:** Yes. They took the Epstein  
14          case boxes.

15          **THE COURT:** This is filed in 2009. The  
16          number is 40,800 -- gives you an idea of how  
17          many foreclosure cases we had back then.  
18          But the bottom line is it's -- I don't know  
19          if it's on this timeline -- the lawsuit is  
20          noted as to when it was filed.

21          **MR. LINK:** 12/7/09.

22          **THE COURT:** 12/7/09. Rothstein is  
23          arrested on 12/1/09. A week later (sic).

24          **MR. LINK:** A week before.

25          **THE COURT:** A week before. Exactly.



Excuse me. A week before. Razorback complaint is filed 11/20/09. Things are, what I would, again, perceive, if you are asking me --

**MR. LINK:** I am.

**THE COURT:** -- to be at the zenith of stress and tension.

**MR. LINK:** I agree.

**THE COURT:** Here is something that is filed that, at least arguably could be suggested, was trying to get to Mr. Edwards at his weakest moment.

**MR. LINK:** How about if for purposes of today I agree with you that that was the motive? I am going to agree with you. Let's say, Your Honor, you are exactly right. For purposes of today that was the motive. What does that have to do -- this is the whole Fifth Amendment -- what does that have to do with this (indicating)?

**THE COURT:** With probable cause.

**MR. LINK:** Probable cause. Because here is what probable cause --

**THE COURT:** Did he have probable cause to file this lawsuit when he did?

1           **MR. LINK:** When he had the most evil of  
2 intent.

3           **THE COURT:** You said it, not me.

4           **MR. LINK:** Only for purposes of today.

5           **THE COURT:** You asked me what my  
6 perception could be --

7           **MR. LINK:** Yes, sir.

8           **THE COURT:** -- and what this jury's  
9 perception, more importantly, could be.  
10 Because again, any answers that are given by  
11 this Court are what I perceive based upon 35  
12 years of doing this work as a trial lawyer  
13 and a trial judge, and seeing hundreds of  
14 jurors and how they would go about their  
15 work.

16           **MR. LINK:** You're older than I am. I  
17 didn't think that was possible.

18           **THE COURT:** So that's where I think my  
19 frame of reference is.

20           **MR. LINK:** And I appreciate it. And I  
21 appreciate it. And I'm agreeing with you,  
22 when you look at the element with what you  
23 just described it could potentially be  
24 evidence of malice. According to the jury  
25 instruction and the case law, is it cannot

1 be evidence of probable cause.

2 Here is one of the disconnects. I  
3 heard Mr. Scarola tell you the two  
4 statements he wants to focus on. What he is  
5 telling you in a subtle way is that he wants  
6 to have a defamation case. Publication of  
7 two statements, falsity. And then he said  
8 to you, then the burden shifts, which it  
9 does in a defamation case. He used the  
10 defamation words: truth with good motive.  
11 This is not a defamation case.

12 It doesn't matter. It doesn't matter  
13 if they have all the evidence in the world  
14 that they would have won, they would have  
15 had a landslide victory if the Epstein  
16 versus Rothstein and Edwards case was tried.  
17 It doesn't make any difference, because the  
18 focus has to be in December 2009 was there  
19 enough information?

20 I'm not saying, Judge, if you were the  
21 lawyer if you would have brought it, or  
22 whether I would have brought it, but it was  
23 brought. And the question is, was there  
24 enough information available that a  
25 reasonable person would -- could have

1 reasonably brought this claim when they did?

2 The timing can be suspect. The motive  
3 can be suspect. The malice can be suspect.  
4 But if there's enough information and  
5 logical inferences, then you don't have a  
6 failure of probable cause.

7 And the reason that's important under  
8 the Fifth Amendment is if these three  
9 plaintiffs come in and testify, then  
10 essentially what we have -- we are trying  
11 the very original case that was filed in  
12 2008, because I have to then cross-examine  
13 them on all of their claims and their  
14 damages and their health conditions, and  
15 whether they had done prostitution before  
16 and all of the other things that would have  
17 been tried in that case.

18 So then if we open the door to 40 other  
19 people, we are going to have 43 sexual  
20 molestation cases.

21 **THE COURT:** I'm not suggesting we are  
22 doing that. Again, this is not the work of  
23 Mr. Scarola. This is not the work of  
24 Mr. Edwards. This is not the work of you or  
25 Ms. Rockenbach. This is the work of

1 Mr. Epstein --

2 **MR. LINK:** I agree it is.

3 **THE COURT:** -- making these allegations  
4 in subparagraph H, 1 through 3 -- some weird  
5 tiny numbers. H, 1 through 3. He's, with  
6 all due respect, stuck with these  
7 allegations. He's stuck with this lawsuit.  
8 He's stuck with the claims that are  
9 contained therein and the allegations that  
10 are contained therein.

11 **MR. LINK:** Absolutely. I agree  
12 100 percent. But what are we stuck with?  
13 That's the question. Are we stuck trying  
14 this case, Judge? Or are we stuck trying to  
15 prove to a jury that, based on the  
16 information that existed, that we had a  
17 reasonable basis to bring a civil  
18 proceeding?

19 Because that's what it talks about. It  
20 doesn't say what claim did you bring? What  
21 count did you bring? What statements did  
22 you bring? It is a civil proceeding.

23 **THE COURT:** Right now, though,  
24 Mr. Link, we're concentrating on the Fifth  
25 Amendment issues. There is not a motion in

1           limine in front of me at this juncture as to  
2           the 40 other -- or the 40-in-total alleged  
3           victims. There is not a motion in front of  
4           me regarding how far we are going to go with  
5           regard to the trial --

6           **MR. LINK:** Fair enough Judge.

7           **THE COURT:** -- in regard to the claims  
8           of the three litigants represented by  
9           Mr. Edwards.

10          **MR. LINK:** Your Honor is 100 percent  
11          right. I appreciate you indulging me to  
12          answer some of the questions that were on my  
13          mind. And I appreciate that.

14          Where we would like to go next, Your  
15          Honor, if the Court has time -- or we can  
16          take it up next time -- are those things  
17          that were on the exhibit list and witness  
18          list.

19          One of the things we don't know, based  
20          on the rulings so far, is will E.W., L.M.  
21          and Jane Doe be taking the stand, because  
22          that's part of the motion in limine, what we  
23          have been talking about.

24          **THE COURT:** Are they listed as  
25          witnesses?

1           **MR. LINK:** Pardon me?

2           **THE COURT:** Have they been deposed?

3           **MR. LINK:** They have not been deposed  
4 in this case.

5           **THE COURT:** I presume they are listed  
6 as witnesses.

7           **MR. LINK:** They are listed as  
8 witnesses.

9           **MR. SCAROLA:** Your Honor, I'm sorry --

10          **MR. LINK:** Were they deposed in this  
11 case?

12          **MR. SCAROLA:** One of them was deposed.

13          **MR. LINK:** I'm sorry.

14          **MR. SCAROLA:** One of them was deposed  
15 in this case just recently.

16          **MR. LINK:** I thought that was -- oh,  
17 yes. You're right. Sorry about that. One  
18 out of two.

19          **MR. SCAROLA:** And the only one noticed  
20 to be deposed.

21          **MR. LINK:** And that's an issue that you  
22 told us to come back to you on, Judge,  
23 because if they are going to be called -- I  
24 don't know if they are -- but if they are  
25 going to be called, then I would like the

1 opportunity to depose those two.

2 **THE COURT:** What I said somewhat  
3 off-the-cuff, but not as articulate as the  
4 Second District Court of Appeal in the case  
5 of Liabos versus Harman -- L-I-A-B-O-S.  
6 Harman, H-A-R-M-A-N -- 215 So.2d 487, was  
7 what I intended earlier, just so that we are  
8 all clear on the issue of probable cause, at  
9 least as it relates in this case in my  
10 relatively quick word search.

11 It says, It should be first noted that  
12 the lack of probable cause is a mixed  
13 question of law and fact -- I will omit the  
14 citation -- that is to say, when the facts  
15 relied on to prove a lack of probable cause  
16 are in dispute, their existence is to be  
17 determined by the jury as a question of  
18 fact. Their legal effect, on the other  
19 hand, is determined -- to be determined by  
20 the Court, but only after these facts are  
21 admitted to found -- are admitted or found  
22 to be true.

23 **MR. LINK:** Yes. That's right. We are  
24 in complete agreement, which is, if the  
25 facts we say we relied on in bringing this



1 claim -- if there's a dispute about one of  
2 those facts and whether we rely on it, then  
3 we would have a jury trial, and the jury  
4 would determine whether we relied or not.

5 The Court would then take the 10 pieces of  
6 information that was relied on and decide if  
7 that was enough.

8 You may agree it is, you may agree it  
9 is not, Judge. It's going to be your call.

10 **THE COURT:** Let's go back to the Fifth  
11 Amendment issues and deal with those now.

12 You have gotten my global rulings on  
13 the issues. I am going to review the  
14 individual questions that are intended to be  
15 reasked or to be published by the  
16 counter-plaintiff Edwards at trial as it  
17 relates to Mr. Epstein's invocation of the  
18 Fifth Amendment and the related privileges  
19 that he is claiming. I don't want to be  
20 hamstrung by this record as only dealing  
21 with Fifth Amendment. Anything that's in  
22 his deposition that has been objected to on  
23 privilege grounds.

24 **MR. LINK:** Thank you, Your Honor. We  
25 appreciate it.

1           **THE COURT:** Thanks.

2           What I would like to then get into next  
3           are some of these exhibits. If we can deal  
4           with those now, let's go ahead and do that.  
5           We will use the next hour or so to take care  
6           of those, please.

7           **MS. ROCKENBACH:** May I approach the  
8           bench, Your Honor?

9           **THE COURT:** Sure.

10          **MS. ROCKENBACH:** I have a copy of  
11          Mr. Edwards' amended exhibit list. And  
12          those items that are highlighted -- some of  
13          which Your Honor has already mentioned --  
14          this would be related to paragraph B -- or  
15          item B in the revised omnibus motion in  
16          limine on page 22. Mr. Epstein has raised  
17          both and asserted both relevance, 90.401,  
18          and the gatekeeper function of the Court,  
19          probative value, prejudicial effect of  
20          90.403.

21          Some of the examples that Your Honor  
22          had mentioned, I think, was a massage table,  
23          which was number 59. But if we start at the  
24          front, there is an order confirmation from  
25          Amazon for the purchase of a book entitled

1 "Slave Craft: Workbook for Erotic Slaves and  
2 their Owners." Completely irrelevant,  
3 prejudicial, has zero probative value  
4 whatsoever to do with the malicious  
5 prosecution action.

6 The same is true -- and I have  
7 highlighted all of these -- they are really  
8 grouped, Your Honor. Some of them are just  
9 so outrageous when you read them, such as  
10 the erotic book, sex offender registrations,  
11 massage table, school records and year books  
12 of Jane Doe and -- unidentified year books  
13 just of Royal Palm Beach. Flight logs,  
14 evidence of contributions to Palm Beach  
15 Gardens Police Department.

16 And there are some articles, which  
17 leads me very quickly -- and I think we can  
18 probably -- I hate to jump, but I think,  
19 based on Your Honor's ruling, it's possible  
20 that Mr. Scarola will agree to item C in the  
21 motion in limine, which relates to  
22 derogative adjectives when referencing my  
23 client.

24 Based on the rulings that you have made  
25 this morning, I believe that Mr. Scarola

1           probably would agree not to refer to  
2           Mr. Epstein as convicted child molester,  
3           billionaire pedophile or the like.

4           **THE COURT:** Well, billionaire  
5           pedophile, I agree is subject to argument.  
6           But convicted child molester, Mr. Scarola.

7           **MR. SCAROLA:** That is an accurate  
8           description of Mr. Epstein. It is a  
9           description, which I believe appears in some  
10          of the newspaper articles that Mr. Epstein  
11          alleges he relied upon to form a reasonable  
12          belief that Bradley Edwards was a  
13          participant in these -- in this Ponzi  
14          scheme.

15          **THE COURT:** Did he take a plea of  
16          guilty?

17          **MR. SCAROLA:** Yes. He entered a plea  
18          of guilty to two felonies. He is a  
19          registered sex offender here in --

20          **THE COURT:** I just want to make sure it  
21          was a guilty plea, as opposed to a nolo  
22          or --

23          **MR. SCAROLA:** No. It was a guilty  
24          plea, Your Honor.

25                 Under the non-prosecution agreement

1 with the federal government, he was required  
2 to plead guilty to two state court felonies.

3 **THE COURT:** Mr. Goldberger, did you  
4 want to comment on that?

5 **MR. GOLDBERGER:** Thank you, Your Honor.  
6 Just for a point of clarification, neither  
7 of the counts that Mr. Epstein pled guilty  
8 to are, quote, those that suggest that he's  
9 a child molester. It was procuring an  
10 underage for prostitution. That's the  
11 count.

12 So the suggestion by counsel for the  
13 counter-plaintiff that he is somehow a child  
14 molester, there's just no basis in the  
15 guilty plea that he entered.

16 Now, he is a registered sex offender  
17 subject to a 403 analysis. Perhaps Counsel  
18 will be able to go there. But there's no  
19 evidence to support, based on the documents  
20 and on the guilty plea, that he's a child  
21 molester. He simply didn't plead guilty to  
22 anything factually related to that.

23 **THE COURT:** Tell me exactly what he  
24 pled guilty to.

25 **MR. GOLDBERGER:** Let me get the

1 document, if I can --

2 **THE COURT:** Sure.

3 **MR. GOLDBERGER:** -- Your Honor, so  
4 there's no mistake. Solicitation for  
5 prostitution, procuring someone under the  
6 age of 18 for prostitution.

7 **MR. SCAROLA:** Three someones, which  
8 made it a felony, correct?

9 **MR. GOLDBERGER:** Yeah. Solicitation of  
10 prostitution requires three individuals  
11 before it goes from a misdemeanor to a  
12 felony.

13 **THE COURT:** Even if it's under the age  
14 -- alleged victim is under the age of 18?

15 **MR. GOLDBERGER:** That's the other count  
16 that he pled guilty to. Solicitation of  
17 prostitution of someone under the age of 18.

18 The solicitation for prostitution, in  
19 order to make that a felony it requires  
20 three separate incidents.

21 But none of those suggest factually in  
22 any way the facts that he was a child  
23 molester. That's the point that I think my  
24 co-counsel is trying to make.

25 **THE COURT:** Convicted child molester is

1 the term that was used.

2 **MR. GOLDBERGER:** And that's simply not  
3 factually correct.

4 **THE COURT:** Anything else, Mr. Scarola?

5 **MR. SCAROLA:** Since we are dealing with  
6 this in the context of Fifth Amendment  
7 assertions --

8 **THE COURT:** No, we are dealing with  
9 this as a matter of a portion of the omnibus  
10 motion in limine.

11 **MR. SCAROLA:** Then I don't have any  
12 further comment.

13 **THE COURT:** The objection is sustained.  
14 The motion is granted.

15 As I understand it in reviewing the  
16 case law recently, the guilty plea would be  
17 admissible. The registration of sex  
18 offender, I am going to need some additional  
19 briefing on.

20 **MS. ROCKENBACH:** And believe me, I've  
21 done that, Your Honor. I'm not sure we can  
22 take it up today. But Mr. Edwards asked  
23 this Court to take judicial notice of it and  
24 we have supplied a response.

25 **THE COURT:** I can only go through so

1 much material within the time --

2 **MS. ROCKENBACH:** I know.

3 I think we only addressed part C of the  
4 motion in limine. I hoped it would be  
5 quick, that's why I brought it up.

6 **THE COURT:** Off the record.

7 (A discussion was held off the record.)

8 **MR. SCAROLA:** Getting back to the  
9 ruling Your Honor just made, I certainly  
10 have no intention of referring to Jeffrey  
11 Epstein as a convicted child molester when  
12 his convictions did not expressly relate to  
13 child molestation. It was solicitation of  
14 prostitution, multiple solicitations for  
15 prostitution. I will be sure that I  
16 accurately refer to those things when I make  
17 reference to them.

18 **THE COURT:** Of a minor?

19 **MR. SCAROLA:** Of minors.

20 **THE COURT:** My understanding of the  
21 case law is clear that the plea is  
22 admissible.

23 **MS. ROCKENBACH:** Your Honor, maybe we  
24 should take that up. And I guess we are  
25 going to skip exhibits for a minute, because



1 this is too important to just gloss over.

2 **THE COURT:** I don't know if it has been  
3 briefed, at least in the briefs that --

4 **MS. ROCKENBACH:** Probably not the way  
5 we would like, but we don't want to paper  
6 the court.

7 Pages 26 and 27 deal with the  
8 derogatory adjectives. That is somewhat  
9 along those lines. But where I think Mr.  
10 Scarola is going is 90.610 of the Florida  
11 Evidence Code, which indicates that when  
12 Mr. Epstein is on the stand he can be asked,  
13 Have you ever been convicted of a felony?  
14 The answer, Yes. But the identity of that  
15 felony is not admissible, and that is part  
16 of the evidence code.

17 So I'm not sure -- Your Honor is  
18 correct, this has not been fully briefed,  
19 because all that I anticipated were these  
20 two very inflammatory terms.

21 **THE COURT:** The distinction, though,  
22 Ms. Rockenbach, that I would respectfully  
23 make -- and I'm not going to suggest that  
24 I'm an authority on this particular area --  
25 is that typically that question is asked for

1 one of credibility, meaning, have you ever  
2 been convicted of a felony or a misdemeanor  
3 involving moral turpitude.

4 **MS. ROCKENBACH:** Correct.

5 **THE COURT:** If the answer is yes, the  
6 next question is how many times. If there  
7 is any falsity to any of those -- either of  
8 those responses, then the requesting party  
9 has the opportunity to provide the court,  
10 and potentially the jury, with  
11 counter-evidence typically in the form of  
12 certified copies of convictions.

13 **MS. ROCKENBACH:** That's correct.

14 **THE COURT:** Now, that's a lot different  
15 than in this case, where we are not  
16 necessarily talking about merely  
17 credibility. What we're talking about what  
18 in essence is at -- if not the heart,  
19 certainly near the center of the entire  
20 case.

21 In other words, but for the fact  
22 that -- at least, but for one of the facts  
23 that Mr. Epstein was convicted, the context  
24 of a malicious prosecution claim and the  
25 context of the contentions that would be

1 made by Mr. Edwards relating to the  
2 malicious prosecution claim would be that  
3 his conviction and his legal peril were part  
4 of his reasons for bringing the case against  
5 Mr. Edwards.

6 So this is not merely an issue of  
7 testing credibility of any given witness.  
8 As I understand it, just about any witness  
9 can be asked those questions. This is more  
10 of an issue of a fact central to the  
11 presentation of the case.

12 **MS. ROCKENBACH:** Your Honor,  
13 Mr. Epstein's guilty plea was June 30th,  
14 2008. His lawsuit against Mr. Edwards was  
15 December 7th, 2009. So the guilty plea was  
16 entered at least a year and a half before he  
17 sued Mr. Edwards.

18 And my concern with this under the  
19 impeachment part of the Florida Evidence  
20 Code 610.5 -- I am going to quote from  
21 Ehrhardt, 2016 version, When a witness who  
22 testifies as a criminal defendant there is a  
23 danger -- we are not even a criminal  
24 defendant. We are not even trying the  
25 criminal case -- but there's danger that the

1 jury will consider the convictions, which  
2 are admitted, only to impeach as evidence  
3 the defendant is a bad person. The concern  
4 is greater when there are number of prior  
5 convictions.

6 But the point is, this is bad character  
7 evidence under 90.404. It's improper  
8 impeachment under 90.610. And we absolutely  
9 oppose and object to the guilty plea coming  
10 into evidence. It has no relevance to the  
11 issue of why my client filed a malicious  
12 prosecution action a year and a half after  
13 he pled guilty.

14 **THE COURT:** Mr. Scarola.

15 **MR. SCAROLA:** Ms. Rockenbach is  
16 incorrect that we would seek to admit this  
17 evidence solely under 90.610, because under  
18 that provision of the evidence code, we  
19 would be restricted to, Have you ever been  
20 convicted of a crime? How many times? I  
21 understand that entirely. And that's  
22 strictly a matter of credibility.

23 However, the issue that we have the  
24 burden of proving is an issue of probable  
25 cause. And that involves, as we have

1 explained in great detail, an analysis of  
2 what Mr. Epstein knew. Part of what  
3 Mr. Epstein knew when he sued Bradley  
4 Edwards is that he was guilty of multiple  
5 crimes involving sexual activity with  
6 minors. That's part of what he knew. He  
7 pled guilty to that.

8 Now, he was asked in deposition, Who  
9 are the minors that you pled guilty to?  
10 Objection. Fifth Amendment. I refuse to  
11 answer on the grounds that it may tend to  
12 incriminate me. He refused to identify  
13 those people.

14 Well, we can draw an adverse inference  
15 from that. And the adverse inference we can  
16 draw is that the three people were L.M.,  
17 E.W. and Jane Doe.

18 Now, he can get up and try to rebut  
19 that adverse inference through something  
20 other than his own testimony, because  
21 through his own testimony he has foreclosed  
22 any further evidence coming from him.

23 But if there's some independent source  
24 where he can suggest to the jury that this  
25 is not a proper inference to draw, he wasn't

1 pleading guilty to crimes committed against  
2 these three young women -- these three  
3 children at the time -- then he can do that.

4 But it is relevant and material to the  
5 issue of probable cause because he admitted  
6 sexual offenses relating to children and  
7 refuses to identify in the context of this  
8 case who those children are.

9 So this isn't just propensity. This  
10 isn't bad character. This is evidence that  
11 is directly material to an element of this  
12 case that we are obliged to prove.

13 So your Honor's reaction was absolutely  
14 correct. There are other reasons why this  
15 comes in in the context of this case.

16 Thank you, sir.

17 **MS. ROCKENBACH:** Your Honor, may I  
18 reply?

19 **THE COURT:** Sure.

20 **MS. ROCKENBACH:** In Mr. Epstein's  
21 deposition, March 17th, 2010, on page 103,  
22 Mr. Scarola asked him, line 23, "Who is the  
23 minor that you procured for prostitution?"  
24 And the answer is, "I do not know."

25 Let's get back to the probable cause

1 issue.

2 **MR. SCAROLA:** I'm sorry. I do stand  
3 corrected. I am remembering now that that  
4 was his response. It wasn't the Fifth  
5 Amendment assertion. It changes none of the  
6 arguments I've just made.

7 **THE COURT:** I understand.

8 **MS. ROCKENBACH:** Your Honor, the issue  
9 of whether my client pled guilty to  
10 prostitution with one minor or not is not  
11 relevant to what facts and circumstances --  
12 and that's the phrase of all the cases  
13 reported -- what facts and circumstances  
14 were known to Mr. Epstein when he filed his  
15 malicious prosecution.

16 And the Wright versus Yorco (phonetic)  
17 case. We haven't talked about it, but --

18 **THE COURT:** I'm familiar with it.

19 **MS. ROCKENBACH:** I'm sure, Your Honor.

20 -- both sides cited it. And it talks  
21 about what constitutes that probable cause.  
22 The public record. The public record. So  
23 my client can rely on two parts. Rely on  
24 firsthand knowledge or trustworthy  
25 information provided to him. That's the

1           Razorback lawsuit. That's Mr. Bill Scherer,  
2           the Fort Lauderdale attorney being quoted by  
3           the newspaper as saying that Epstein --  
4           Rothstein didn't act alone. It's the head  
5           of the South Florida FBI saying this was not  
6           a one-man show.

7           The issue of my client's plea of guilty  
8           has nothing to do with his probable cause of  
9           whether he believed Mr. Edwards was in  
10          connection with Mr. Rothstein in puffing up  
11          the claims.

12          **THE COURT:** One thing I appreciate the  
13          appellate courts doing recently is writing  
14          somewhat extensively on the fluidity of  
15          motions in limine, and the fact that until  
16          the court can digest at trial all of the  
17          facts that are being presented in putting  
18          these things into context, it makes it  
19          somewhat difficult, and recognizes the trial  
20          court's difficulty in dealing with some of  
21          these motions and some of these issues  
22          without context.

23          But, in my respectful view, the flaw of  
24          the argument from its inception -- again,  
25          I'm not trying to be disrespectful -- but



1 the flaw in the argument is what I perceive  
2 to be a lack of recognition of, not only  
3 Mr. Epstein's rationale for filing his suit,  
4 but the focus, or lack thereof, on  
5 Mr. Edwards' responsibility and burden -- a  
6 strict one and a strong one according to  
7 onerous -- used by one of the cases in being  
8 able to prove probable cause here.

9 And Mr. Scarola has used in his  
10 briefing this building-block approach. And  
11 I think the same type of analogy or picture  
12 can be utilized here when speaking about the  
13 motive. What was the probable cause in  
14 actuality from the counter-plaintiff  
15 Edwards' standpoint for Epstein doing what  
16 he did?

17 As I indicated before, but didn't use  
18 the analogy, what you and Mr. Link provided  
19 to the Court provides, not only building  
20 blocks for potentially Mr. Epstein's  
21 probable cause, but likewise provides  
22 building blocks for Mr. Edwards' proving  
23 that he did not have probable cause.

24 And as far as the Court is concerned,  
25 if the guilty plea came after he filed suit,

1 then there might be some reasonable argument  
2 to separate it out and say, Judge, he hadn't  
3 even filed suit -- the suit was filed  
4 -- strike that.

5 He hadn't pled guilty. The guilty plea  
6 came three years after he filed this suit  
7 for malicious prosecution, then it would  
8 probably be a relevancy argument that may or  
9 may not win the day.

10 But when looking at it from a building  
11 block type of analysis, as I have in the  
12 most simplest terms, in looking at it from  
13 both sides, which I am incumbent to do, as  
14 Mr. Scarola alluded to, this is but one item  
15 that could be argued to have fueled  
16 Mr. Epstein to have filed this lawsuit, thus  
17 making it relevant.

18 Now, the fluidity issue that I spoke  
19 about is, I'm willing to look at it, again,  
20 if there's a case on point that specifically  
21 says otherwise. But for purposes of this  
22 particular matter, the Court would find  
23 absent the production of a case that would  
24 say otherwise, that Mr. Epstein's guilty  
25 pleas -- I understand it's combined, so I'm

1 not suggesting there were more than one  
2 combined plea -- would be relevant, that it  
3 would be relevant to the issue of probable  
4 cause, and it would be relevant,  
5 potentially, to the issue of malice.

6 And that, again -- with the Court  
7 looking at it from both sides and analyzing  
8 it from both sides, it could be used by  
9 Mr. Epstein. It could be used by  
10 Mr. Edwards. But it provides at least some  
11 relevancy, defined again as proving or  
12 tending to prove or disprove a material  
13 fact. The material fact is the element of  
14 probable cause and perhaps malice.

15 So again, I am going to rule that they  
16 would be admissible.

17 Next issue, please.

18 But again, we are going to completely  
19 and entirely stay away from any type of  
20 pejorative comments. I understand that  
21 sometimes things are said in the heat of  
22 deposition that would never be repeated at  
23 trial. Again, I'm certainly ordering that  
24 that not take place.

25 All right. We want to go back to some

1 of these -- in the time that we have left,  
2 let's go back to some of these exhibits and  
3 see if we can work through them.

4 **MS. ROCKENBACH:** Thank you, Your Honor.

5 We had identified and have highlighted,  
6 starting with number three, photographs and  
7 information of Mr. Epstein's homes, planes  
8 automobiles. I'm not sure what relevance  
9 that would have as to why he filed a  
10 malicious prosecution action.

11 **THE COURT:** Let's take them one at a  
12 time.

13 Mr. Scarola, what's your position?

14 **MR. SCAROLA:** His homes and his  
15 automobiles are evidence with respect to his  
16 pecuniary circumstances, obviously a  
17 relevant matter when we are talking about a  
18 punitive damage claim.

19 **THE COURT:** Typically, though, net  
20 worth is what is considered, not  
21 necessarily -- unless it's impeachment,  
22 i.e., you'll have a picture of a home that  
23 he owns in the US Virgin Islands -- I think  
24 that he has some connection with one of  
25 those islands. And I'm not trying to

1 suggest anything as far as anything  
2 inappropriate. But I can conceive of this  
3 situation that if Mr. Epstein testifies that  
4 his net worth is X, comprised of A, B and C  
5 in large part, but you find an asset that he  
6 has not taken into account that's worth  
7 twice as much of his claimed net worth --

8 **MR. SCAROLA:** I know he has a minimum  
9 net worth of --

10 I don't mean to interrupt, Your Honor,  
11 but Mr. Epstein refuses to provide any  
12 evidence with regard to his net worth, so we  
13 are obliged to offer circumstantial evidence  
14 of his net worth, unless and until those  
15 objections based on Fifth Amendment grounds  
16 are overruled on the basis that they are  
17 non-testimonial.

18 **THE COURT:** I think that's a subject  
19 for another motion.

20 **MS. ROCKENBACH:** It is, Your Honor.

21 **MR. SCAROLA:** It is. But Your Honor  
22 should not be deciding this issue on the  
23 basis of the premise that we are going to  
24 get evidence from Mr. Epstein as to what  
25 Mr. Epstein's net worth is.

1           **THE COURT:** Agreed.

2           **MR. SCAROLA:** All he has told us is  
3 he's willing to stipulate to a net worth in  
4 excess of \$100 million. Well, it makes a  
5 difference as to whether it's 100 million,  
6 200 million or a thousand million, that is,  
7 a billion dollars, or \$2 billion.

8           So even if we're left with a Fifth  
9 Amendment assertion, we are back to the same  
10 issue that was raised by the defense, and  
11 that is, there needs to be some evidence  
12 independent of the Fifth Amendment assertion  
13 that would allow the inference to be --

14          **THE COURT:** I'm going to cut you off.  
15 I'm going to defer on number three.

16          Number four is the Amazon receipt for  
17 the "SM 101: A Realistic Introduction,  
18 Slave Craft: Roadmap for Erotic  
19 Servitude-Principles, Skills and Tools" and  
20 "Training Miss Abernathy: A Workbook for  
21 Erotic Slaves and Their Owners."

22          **MR. SCAROLA:** I never read it.

23          Your Honor, if I might --

24          **MS. ROCKENBACH:** It has no relevance,  
25 Your Honor. Prejudicial. Should not be

1 discussed, referenced, admitted. I think  
2 it's also a receipt from Amazon for the  
3 book, by the way. It's an order  
4 confirmation. If my memory serves correct,  
5 it's a receipt for the purchase of a book.  
6 It has nothing to do with malicious  
7 prosecution.

8 **THE COURT:** Mr. Scarola.

9 **MR. SCAROLA:** In fact, it does. I  
10 might explain to Your Honor that many of the  
11 items that are on this list that are being  
12 challenged, a vast majority of them, were  
13 part of an appendix to the motion for  
14 summary judgment that was not defended  
15 against by Mr. Epstein.

16 **THE COURT:** Let me ask you this. Was  
17 this particular exhibit located prior to the  
18 suit being filed by Mr. Epstein?

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

20 **MS. ROCKENBACH:** It's the receipt  
21 located by whom?

22 **THE COURT:** By anybody. For the  
23 purposes of this case.

24 **MR. SCAROLA:** These are items --

25 **THE COURT:** In other words, was it

1           discovered in a lawsuit that was filed prior  
2           to Mr. Epstein filing this suit?

3           **MR. SCAROLA:** No, sir. It was  
4           discovered when a search warrant was  
5           executed by law enforcement shortly after  
6           the criminal allegations were made against  
7           Mr. Epstein before any of the civil lawsuits  
8           were filed.

9           So law enforcement gets probable cause  
10          to execute a search warrant on Mr. Epstein's  
11          home. And one of the things that is  
12          found -- or many of the things that are  
13          described here are found during the course  
14          of the execution of that search warrant and  
15          formed probable cause for the criminal  
16          charges against Mr. Epstein.

17          Even more significantly, they formed  
18          the basis for the civil lawsuits that were  
19          filed on behalf of L.M., E.W. and Jane Doe,  
20          that is, this is all evidence taken into  
21          account in substantiating the validity of  
22          the claims of these three particular victims  
23          of Mr. Epstein.

24          And all of these things are delineated  
25          in the motion for summary judgment that



1 Mr. Epstein does not defend against and  
2 voluntarily dismisses his case on the eve of  
3 the hearing.

4 Your Honor is well aware of  
5 procedurally he would have been obliged well  
6 in advance of the hearing to file his  
7 opposition to the motion for summary  
8 judgment. He doesn't do that.

9 Why is that significant in the context  
10 of this case? Because, as we have heard  
11 from the defense, they are going to  
12 challenge whether there is a bona fide  
13 termination of the claim against Mr. Edwards  
14 in favor of Mr. Edwards. Was the abuse of  
15 process claim terminated under such  
16 circumstances as to indicate a bona fide  
17 termination?

18 How do we make that decision? Well,  
19 the only way to make that decision is to  
20 talk about the motion for summary judgment,  
21 what supported the motion for summary  
22 judgment, and the fact that the motion for  
23 summary judgment was not opposed. A  
24 voluntary dismissal was taken, and the  
25 statute of limitations permitted to expire

1 without ever refiling those claims.

2 So as long as bona fide termination  
3 remains an issue, the motion for summary  
4 judgment is clearly relevant and material.  
5 And this is all part of the motion for  
6 summary judgment.

7 Many of these things, in addition to  
8 that, forms the basis for the explanation of  
9 Mr. Edwards' conduct when he was a member of  
10 RRA, and demonstrate that he wasn't abusing  
11 the process in any respect at all while he  
12 was prosecuting these claims. He was  
13 pursuing very relevant and material avenues  
14 of discovery reasonably calculated to lead  
15 to admissible evidence.

16 So that's my full response to this.

17 **THE COURT:** The objection is sustained  
18 on two grounds: on relevancy and also 403  
19 analysis.

20 I will entertain the introduction  
21 outside the presence of the jury, if it  
22 becomes necessary.

23 The other concern I have is that, at  
24 best, it appears to sound like it may be  
25 impeachment on a collateral matter,

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

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

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

10 **MR. SCAROLA:** Understood.

11 **THE COURT:** The NPA, I have already  
12 indicated that the inclination would be --  
13 if properly predicated -- would be allowed.  
14 The Jane Doe, one of two complainants -- I  
15 don't see any -- what would be the grounds  
16 for objecting to that?

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

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

1 goes far afield from --

2 **THE COURT:** This is the same Jane Doe  
3 or a different Jane Doe?

4 **MR. SCAROLA:** Same Jane Doe.

5 **THE COURT:** Overruled.  
6 Next issue.

7 **MR. SCAROLA:** Excuse me, Your Honor.  
8 There are two Jane Does. This is Jane Doe  
9 102.

10 Jane Doe 102 was a Bob Josefsberg  
11 client.

12 And just so I orient Your Honor with  
13 regard to this matter, under the terms of  
14 the non-prosecution agreement, the federal  
15 court appointed Bob Josefsberg as counsel on  
16 behalf of all unrepresented victims to  
17 protect the interest of unrepresented  
18 victims turn the terms of the  
19 non-prosecution agreement.

20 One of those multiple victims being  
21 represented by Mr. Josefsberg was an  
22 individual identified as Jane Doe 102. She  
23 has since been publicly identified as  
24 Virginia Roberts/Virginia Giuffre.

25 And the specific allegations in this

1 complaint include the transport of Jane Doe  
2 Number 2 on Mr. Epstein's private jets to  
3 various homes owned by Mr. Epstein in  
4 various locations inside and outside the  
5 United States.

6 **THE COURT:** She's expected to be a  
7 witness?

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

9 **THE COURT:** Live witness?

10 **MR. SCAROLA:** Live.

11 **THE COURT:** At this point I'm going to  
12 find that, if, in fact, she is a witness,  
13 that it would be cumulative, and hence I am  
14 going to sustain the objection on those  
15 grounds.

16 **MR. SCAROLA:** May I just finish my  
17 argument as to why this complaint was of  
18 significance? Because she does -- she does  
19 allege in the complaint that she was  
20 molested onboard the airplane, and that she  
21 was prostituted out to third parties onboard  
22 the airplane, which provided the basis for  
23 Mr. Edwards seeking airplane logs and the  
24 testimony of pilots and the testimony of  
25 others identified in the flight logs as

1 being present on the plane.

2 **THE COURT:** That's fine. I don't have  
3 a problem with Mr. Edwards testifying. If  
4 it becomes an issue in terms of credibility  
5 or whatever it might be, then I will take  
6 another look at it. But on the basis of the  
7 arguments that I have heard, the objection  
8 is sustained for the reasons that I  
9 provided.

10 **MR. SCAROLA:** Understood. Thank you,  
11 sir.

12 **MS. ROCKENBACH:** Your Honor, before we  
13 leave, based on Your Honor's ruling, I would  
14 make an ore tenus motion for leave to depose  
15 Virginia Roberts, because now it has become  
16 clear that she is going to be testifying,  
17 based on Mr. Scarola's statement and Your  
18 Honor's ruling.

19 **THE COURT:** Wasn't she scheduled to  
20 come to court from Australia? Wasn't that  
21 the lady?

22 **MR. SCAROLA:** That's where she's  
23 living. She was scheduled to come to court.  
24 She was available to be deposed previously.  
25 They chose not to take her deposition. She

1 has been listed as a witness for years in  
2 this matter.

3 **THE COURT:** You'll have to do a written  
4 motion. But I want to be consistent with  
5 what I said recently, and that is that it's  
6 not -- the continuance is not -- and I  
7 emphasize not -- designed to be a wholesale  
8 reopening of discovery; that the Court would  
9 take that up on an issue-by-issue basis,  
10 but, without pre-deciding anything, unless  
11 it can be demonstrated to the Court that  
12 there was unavailability, that there was a  
13 late filing, that there was some type of  
14 inability of a witness to testify, something  
15 along those lines.

16 These witnesses have been listed for a  
17 lengthy period of time. Again, this was not  
18 the purpose of the motion that was filed and  
19 it was not the import of the order of the  
20 Court.

21 Let's talk about number seven.

22 **MS. ROCKENBACH:** Messages taken from  
23 message pads found at Mr. Epstein's home.

24 **THE COURT:** What do the messages say?

25 **MR. SCAROLA:** They relate to arranging

1 sexual massages with minors. I can't tell  
2 you from memory -- but Mr. Edwards may be  
3 able to -- whether there are specific  
4 references to our three clients.

5 **THE COURT:** Not to be overly technical  
6 or hypertechnical here, is Mr. Edwards  
7 serving as co-counsel?

8 **MR. SCAROLA:** Yes, Your Honor. I think  
9 I've told Your Honor before, we don't  
10 anticipate him taking an active role in the  
11 trial, but he remains as co-counsel of  
12 record in this case.

13 **THE COURT:** Fair enough.

14 Mr. Edwards, would you like to comment  
15 on that?

16 **MR. EDWARDS:** Sure, Your Honor. The  
17 message pads include the names of many of  
18 the underaged females that visited and set  
19 up appointments at Mr. Epstein's home,  
20 including L.M., E.W. and Jane Doe.

21 **THE COURT:** Have they been  
22 authenticated by Mr. Epstein? Or did he  
23 take the Fifth on that?

24 **MR. EDWARDS:** He has taken the Fifth on  
25 questions related to that. They have been



1 authenticated in other depositions by  
2 Detective Vicari, although those were taken  
3 in other cases. But he's an available  
4 witness who could testify as to the chain of  
5 custody, where he found the message -- where  
6 he found the messages and how he gathered  
7 them during the search warrant.

8 **THE COURT:** The relevancy, Mr. Scarola?

9 **MR. SCAROLA:** They clearly relate to  
10 the validity of the claims on behalf of  
11 these three victims of Mr. Epstein. They  
12 corroborate that these young women were  
13 there at his home on many occasions, and  
14 along with a large number of other underaged  
15 females who were being routinely molested by  
16 Mr. Epstein.

17 **MS. ROCKENBACH:** Your Honor, may I  
18 reply? This is inflammatory. These message  
19 pads may be relevant had Mr. Edwards not  
20 settled the three lawsuits in which he  
21 represented those three women. But they are  
22 not relevant in the malicious prosecution  
23 case whether my client had probable cause to  
24 file this action or not. Or malice.

25 We are definitely getting far afield in

1 terms of the exhibits. And it looks like --  
2 and I understand why Mr. Edwards would want  
3 to try exhibits that were relevant to his  
4 clients' action because the exhibits that  
5 should be relevant in the malicious  
6 prosecution case are the facts and  
7 circumstance, or the lack of facts and  
8 circumstances on which my client relied in  
9 filing this lawsuit -- the civil action --  
10 the civil proceeding.

11 Message pads regarding these  
12 appointments are absolutely 90.403  
13 prejudicial and not -- which prejudicial  
14 effect clearly outweighs any remote  
15 probative value in this action.

16 **MR. SCAROLA:** It seems to me that we  
17 are going, unfortunately, around the same  
18 mulberry bush. The validity of the claims  
19 is an issue.

20 In addition to that, the viability of  
21 the claims against Mr. Epstein from a  
22 criminal perspective is part of why he was  
23 so concerned about this non-prosecution  
24 agreement being set aside.

25 He knew that there was a mountain of

1 evidence that would prove that he was a  
2 serial child molester, that there were  
3 dozens and dozens of victims of his  
4 molestations, which were occurring multiple  
5 times a day, day after day after day.

6 And the only way he could foresee at  
7 this point in escaping the criminal exposure  
8 that was clearly going to result in  
9 convictions, because of this mountain of  
10 evidence available, was to scare off the one  
11 person who was challenging that  
12 non-prosecution agreement through the Crime  
13 Victims' Rights Act case.

14 **THE COURT:** I'm going to defer on  
15 ruling on this. But it is not to be  
16 mentioned during opening statements. And it  
17 is going to be determined by the Court in  
18 the context in which I believe it would be  
19 necessary.

20 And I'm concerned about first -- as I  
21 mentioned earlier on in another exhibit --  
22 that this is collateral. That it would  
23 constitute impeachment on a collateral  
24 matter.

25 Again, I don't want to get back into

1 serial child molestation. I believe words  
2 to that effect were just utilized, so that's  
3 the reason for the ruling.

4 I think that right now, based upon what  
5 I'm looking at, which is not the actual  
6 messages, but just the recitation of an  
7 exhibit would be that there -- that any  
8 probative value would be materially  
9 outweighed by the prejudice.

10 **MS. ROCKENBACH:** Thank you, Your Honor.  
11 We are working off of Mr. Edwards' exhibit  
12 list. And the next one is eight, documents  
13 related to Mr. Epstein produced by Alfredo  
14 Rodriguez.

15 **THE COURT:** Alfredo Rodriguez was the  
16 houseperson, if I'm understanding?

17 **MS. ROCKENBACH:** Yes, Your Honor.

18 **THE COURT:** I don't know what that  
19 means. What specifically are we talking  
20 about?

21 **MR. SCAROLA:** We're talking about a  
22 book that contains a list of Jeffrey  
23 Epstein's victims, their names and telephone  
24 numbers, as well as a number of other  
25 contacts that Jeffrey Epstein has, who,

1 through other evidence, were established to  
2 be regular guests in his home.

3 These provided corroboration of the  
4 testimony of L.M., E.W. and Jane Doe. They  
5 provided evidence of the extent of  
6 Mr. Epstein's molestation of children, which  
7 obviously supports the magnitude of the  
8 wrong in which he was engaged, which goes  
9 directly to the punitive value of the claims  
10 brought by L.M., E.W. and Jane Doe, that is,  
11 a jury faced with the task of making a  
12 determination as to the appropriate amount  
13 of punitive damages, is instructed that they  
14 shall take into consideration the magnitude  
15 of the wrong, and that includes the total  
16 number of victims involved in the offender's  
17 wrongdoing.

18 **THE COURT:** I presume that by the time  
19 the case was settled that I or a predecessor  
20 judge in that division had found a valid  
21 claim for punitive damages in terms of those  
22 cases that we are dealing with here?

23 **MR. SCAROLA:** Yes. There were multiple  
24 punitive damages claims pending.

25 **THE COURT:** I would have expected so.

1 I just didn't know the timing.

2 **MR. SCAROLA:** Yes.

3 **MS. ROCKENBACH:** Your Honor's question  
4 got us directly to the point. This is  
5 relevant evidence for punitive damages in  
6 Mr. Edwards' clients' cases, not in this  
7 case.

8 **THE COURT:** My concerns are, again,  
9 that we are going too far afield. And  
10 again, my best efforts are to try to keep  
11 this as a level playing field when it comes  
12 to focusing on the claims that are made in  
13 this particular case, that being the  
14 malicious prosecution case.

15 And while I know and I have already  
16 indicated -- and I believe Epstein's counsel  
17 has conceded -- that it cannot be sanitized,  
18 and will not be sanitized, because it goes  
19 to many of the issues that are involved  
20 here -- and by way of Mr. Edwards'  
21 recitations, through Mr. Scarola, the  
22 motives that Mr. Epstein may have had to  
23 file the action at bar.

24 But at the same time I am going to rule  
25 in the same way as I did as to number seven,

1 and that is that I find that under 403 that  
2 the probative value -- any probative value  
3 is materially outweighed by the prejudice  
4 involved.

5 **MR. SCAROLA:** May I ask a rhetorical  
6 question, Your Honor?

7 **THE COURT:** Sure.

8 **MR. SCAROLA:** When Mr. Epstein alleges  
9 that these cases were ginned up, when he  
10 alleges that asking in the complaint for  
11 \$50 million (sic) was totally out of line  
12 and supportive of his conclusions that this  
13 was a fabricated claim constructed solely  
14 for the purposes of supporting -- knowingly  
15 supporting a Ponzi scheme -- when he alleges  
16 that these cases really had no significant  
17 value, how can we not talk about what the  
18 punitive damage value of the cases were and  
19 why they had enormous punitive damage value  
20 when they are claims relating to a vast  
21 number of molestations by a billionaire?

22 **THE COURT:** Because we are dealing with  
23 the three cases that Mr. Edwards represented  
24 these three individuals. And to allow  
25 records, information about anybody else at

1           this juncture would, in my view, be  
2           collateral to the allegations made by  
3           Epstein in his claim.

4           And there's no contention here that  
5           Mr. Edwards, for whatever reason, went on  
6           some type of organized witch hunt so as to  
7           persecute or threaten Mr. Epstein with proof  
8           of other cases, proof of other alleged  
9           molestations, documents that are at issue or  
10          anything of that nature.

11          **MR. SCAROLA:** That's exactly what was  
12          alleged, sir. It was alleged that Bradley  
13          Edwards was pursuing discovery with regard  
14          to molestations of other children that took  
15          place on an airline when none of Brad  
16          Edwards' clients were ever molested on the  
17          airplane, that he had no reasonable basis  
18          for doing that.

19          **THE COURT:** Now, it seems to me we're  
20          engaging in a negative, proving up a  
21          negative.

22          **MR. SCAROLA:** You lost me.

23          **THE COURT:** You understand what I'm  
24          trying to say?

25          **MR. SCAROLA:** No.



1           **THE COURT:** If none of Mr. Edwards'  
2 clients were molested on an airplane, then  
3 it seems to me to be conceding my point, and  
4 that is, then there's no reason for these  
5 other issues to be introduced, because  
6 there's nobody that Mr. Edwards represented  
7 that was molested on an airplane.

8           **MR. SCAROLA:** That's exactly my point,  
9 sir. That's the defense argument.

10          **THE COURT:** Show me where that's --

11          **MR. SCAROLA:** That's the defense  
12 argument that this was irrelevant discovery.

13          **THE COURT:** Show me where that's in the  
14 complaint about the other alleged victims.

15          **MR. SCAROLA:** We'll have that for you  
16 in just a moment, Your Honor.

17          **THE COURT:** Let me take a look at that  
18 and see how it may or may not be conjecture.

19          **MR. SCAROLA:** While we are finding  
20 that -- we will have that for you in just a  
21 moment -- Your Honor may recall that I  
22 referenced earlier -- and I have,  
23 unfortunately, misplaced the copy of the  
24 federal statute. I should have it -- I  
25 should have it in just a moment.

1           **THE COURT:** I mean, I'm looking at  
2 paragraphs 17 and 18, for example, where  
3 Mr. Epstein alleges, while relative to this  
4 action, Epstein is currently named as  
5 defendant in three civil actions alleging  
6 sexual assault and battery that were handled  
7 by RRA and his attorneys, including Edwards,  
8 prior to its implosion -- presuming he means  
9 RRA's and not Mr. Edwards' implosion -- one  
10 of which was filed in federal court -- and  
11 the two in state court that I have already  
12 identified. The civil actions were filed in  
13 August and September of 2008.

14           Paragraph 18 then says, quote, What is  
15 clear is a fraudulent and improper  
16 investment of a Ponzi scheme was, in fact,  
17 conducted and operated by RRA and certain of  
18 the named defendants, which scheme directly  
19 impacted Epstein as a named defendant in  
20 these civil actions -- referencing the three  
21 at issue.

22           **MS. ROCKENBACH:** Correct.

23           **THE COURT:** Where is --

24           **MR. SCAROLA:** Paragraphs 35 and 36.

25           **THE COURT:** Let's take a look at those.

1 Paragraph 35 states, quote, For instance,  
2 the litigation team relentlessly and  
3 knowingly pursued flight data and passenger  
4 manifests regarding flights Epstein took  
5 with these famous individuals knowing full  
6 well that no underaged women were on board  
7 and no illicit activities took place.

8 Rothstein and the litigation team also  
9 inappropriately attempted to take the  
10 depositions of these celebrities in a  
11 calculated effort to bolster the marketing  
12 scam that was taking place, end quote.

13 Next paragraph?

14 **MR. SCAROLA:** Next paragraph.

15 **THE COURT:** Quote, One of the  
16 plaintiffs' counsel -- strike that.

17 One of plaintiff's counsel, Edwards,  
18 deposed three of Epstein's pilots and sought  
19 the deposition of a fourth pilot currently  
20 serving in Iraq.

21 The pilots were deposed by Edwards for  
22 over 12 hours, and Edwards never asked one  
23 question relating to or about L.M., E.W. and  
24 Jane Doe, RRA's clients, as it related to  
25 transportation on flights of RRA clients on

1 any of Epstein's planes.

2 But Edwards asked many inflammatory,  
3 leading and irrelevant questions about the  
4 pilots' thoughts and beliefs, which will  
5 never be admissible at trial, which could  
6 only have been asked for the purpose of  
7 pumping the cases, and thus by using the  
8 deposition to sell the cases or a part of  
9 them to third parties. End quote.

10 Anything else?

11 **MR. SCAROLA:** Those are two obvious  
12 references in the complaint to conduct on  
13 the part of Brad Edwards alleged to have  
14 been improper and forming part of the basis  
15 for abuse of process claims.

16 **THE COURT:** The Court's ruling remains  
17 the same.

18 **MR. SCAROLA:** I never like to argue  
19 after the Court has already ruled, but there  
20 is one additional point that I want to make.

21 **THE COURT:** Sure.

22 **MR. SCAROLA:** Your Honor, I have cited  
23 in -- we have cited in submissions to the  
24 Court, specifically the motion in limine  
25 addressing the scope of admissible evidence

1           that we have filed. We have cited the  
2           provisions of Florida statute 90.404,  
3           subsection two, commonly known as the  
4           Williams Rule statute, which talks about  
5           evidence of other crimes.

6           We have also cited the Federal Rules of  
7           Evidence, rule 415. And that rule expressly  
8           permits the introduction in evidence of the  
9           molestation of other children in any federal  
10          action, criminal or civil, involving the  
11          molestation of a child.

12          Congress explained -- and quote, That  
13          in the submission to the Court -- the reform  
14          effected by these rules is critical to the  
15          protection of the public from rapists and  
16          child molesters. It's justified by the  
17          distinctive characteristics of the cases to  
18          which it applies.

19          In child molestation cases, a history  
20          of similar acts tends to be exceptionally  
21          probative, because it shows an unusual  
22          disposition of a defendant, a sexual or  
23          pseudosexual interest in children that  
24          simply does not exist in ordinary people.

25          Moreover, such cases require reliance

1 on child victims, whose credibility can  
2 readily be intact in the absence of  
3 substantial corroboration.

4 In such cases, there is a compelling  
5 public interest in admitting all significant  
6 evidence that will shed some light on the  
7 credibility of the charge -- excuse me -- of  
8 the charge and any denial by the defense.

9 So --

10 **THE COURT:** And Mr. Scarola, if we were  
11 trying a sexual molestation case, there may  
12 be a stronger argument. But the very point  
13 that I'm making is that we're not trying a  
14 sexual molestation case, per.

15 Now, there may be elements and issues  
16 that may arise, depending upon the nature of  
17 Mr. Epstein's position relative to these  
18 matters. However, it does not change the  
19 Court's view that these messages taken from  
20 a message pad at Epstein's home relate to  
21 others and that the documents related to  
22 Epstein produced by his houseman,  
23 Mr. Rodriguez, that relate to others,  
24 remains irrelevant. And any probative  
25 value, if found to be relevant, would be

1 materially outweighed by the prejudice.

2 The Court's decision remains the same.

3 I think it's bolstered by the fact that we  
4 are not trying the child molestation case.  
5 And the significance of the collateral cases  
6 is not, in my respectful view, necessarily a  
7 touchstone of this particular case and this  
8 particular analysis.

9 We are going to have to call it a day.

10 I thank you very much, again, for your  
11 arguments and your input, written and oral.  
12 Thank you, again.

13 Again, thanks to our court reporter and  
14 our courtroom personnel also for their hard  
15 work and courtesies.

16 Have a good rest of the week. We will  
17 see you back, if not before, on  
18 December 5th.

19 **MR. LINK:** Thank you for your time.

20 **THE COURT:** We will take up the  
21 remaining issues of evidence first, and then  
22 we will go back to the schedule, which I  
23 very much appreciate you all providing. We  
24 will adhere to that schedule as we continue  
25 on with the motions.

1                   We will be in recess.

2                                 - - -

3                   (The above proceedings were

4                   concluded at 3:55 p.m.)

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4 **COURT CERTIFICATE**5 STATE OF FLORIDA )  
6 : SS  
7 COUNTY OF PALM BEACH )8 I, SONJA D. HALL, certify that I was  
9 authorized to and did stenographically report the  
10 foregoing proceedings and that the transcript is a  
11 true record of my stenographic notes.12  
13 Dated this 1st day of December 2017.14  
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17 SONJA D. HALL  
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