

hearing, hearing - Vol. I

November 5, 2009

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

3 CASE NO. 502008CA028051XXXXMB AB

4  .,

5 Plaintiff,

6 -vs-

7 JEFFREY EPSTEIN,

8 Defendant.
9

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11
12 DEFENDANT'S MOTION TO COMPEL, FOR SANCTIONS, TO
13 STRIKE PLEADINGS AND FOR CONTEMPT OF COURT

14 HEARING BEFORE THE HONORABLE
15 DONALD HAFELE

16 Monday, November 2, 2009
17 Palm Beach County Courthouse
18 West Palm Beach, Florida 33401
19 9:10 - 9:25 a.m.
20
21

22 Reported By:
23 Cynthia Hopkins, RPR, FPR
24 Notary Public, State of Florida
25 Prose Court Reporting

1 APPEARANCES:

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P R O C E E D I N G S

- - -

THE COURT: [REDACTED]. vs. Epstein.

MR. CRITTON: Judge, it looks more complicated than it necessarily is.

THE COURT: I read it. And did you use Judge Hafele as your basis for judge, or Magistrate Johnson's order?

MR. CRITTON: It looks like it, doesn't it.

THE COURT: Well, I was wondering. I told you, I am waiting for that day when you're going to go in front Judge Marra and say Judge Hafele's order says X, Y, and Z.

MR. EDWARDS: I am sure that happened.

THE COURT: Wise guy.

MR. CRITTON: I'd say the interesting part about Judge Johnson's order is that it's consistent not only with yours but with Judge Garrison and Judge Lewis when they each had a case, and she expresses in a very similar fashion to what you did as to why it's relevant and material, as to why the history is relevant and material.

And as she described in both of her

1 orders, it may be painful, you may not like it,
2 but the questions will be asked. They will be
3 asked numerous times not only by the experts,
4 but by the attorneys because they are entitled
5 to that information because of the nature of
6 the claims that were brought.

7 So, you know, it is -- I don't say that it
8 is what it is, but as she described it --

9 THE COURT: You say ergo.

10 MR. CRITTON: And they say I go.

11 THE COURT: Mr. Feaman, welcome. How have
12 you been, sir?

13 MR. FEAMAN: Thank you, sir. Very well.

14 THE COURT: Are you now with the Rothstein
15 firm?

16 MR. FEAMAN: I am. They wanted me to get
17 more active in this case.

18 THE COURT: Very well.

19 MR. CRITTON: Do I know you? Hi, Peter;
20 Bob Critton.

21 MR. FEAMAN: Hi.

22 THE COURT: Long term litigators. Well,
23 it's always good to meet people. I had a
24 couple lawyers, I think it was at the ABODA
25 meeting the other day where I couldn't imagine

1 they did not know each other.

2 MR. FEAMAN: He is way up in the north end
3 and we're stuck down south.

4 THE COURT: That's right. All right. So,
5 where do we stand now? There is a motion to
6 compel for sanctions and strike pleadings and
7 for contempt of court.

8 My ruling is on appeal currently, but
9 primarily if I am remembering correctly and
10 reading this yesterday that the information
11 that you're seeking is the information that was
12 conceded by Plaintiff's counsel subsequent to
13 the order that I entered but at the time of or
14 just prior to the filing of the writ seeking
15 certiorari review.

16 MR. CRITTON: In fact, Judge, is they had
17 already filed the petition wherein they
18 conceded that the only issue that was
19 purportedly on appeal was post visits by [REDACTED].
20 or [REDACTED] to Epstein which would be approximately
21 September of '05 which involved consensual sex.

22 That was the only aspect that they
23 represented to you and they represented that to
24 the Fourth DCA. And what happened at the
25 deposition is both prior to September of '05

1 and post September '05 with regard to
2 non-consensual sex, they asserted her right of
3 privacy.

4 Again it's her claim. She is seeking
5 compensatory and punitive damages in excess of
6 \$10 million. She has a loss of income claim, a
7 loss of earning capacity, and all the emotional
8 claims. And so she asserted, they asserted her
9 right of privacy which flies directly in the
10 face of your order, the third-party rights of
11 other individuals including johns which the
12 case law is johns have no right of privacy, and
13 even employers when, in fact, they had answered
14 interrogatory either No. 2 or 3, both the
15 original interrogatory and better answers to
16 interrogatories consistent with the agreed
17 order that they would provide, she would
18 provide all of her employers, and then she
19 wouldn't testify to whether she worked at
20 certain locations with certain individuals.

21 They had said she never had a journal or a
22 book that reflected wages or individuals that
23 she saw. She kept, she kept journals. In fact
24 it was a journal book that had a Psalm on the
25 front of it, interestingly enough.

1 THE COURT: I remember reading portions of
2 the deposition.

3 Brad, what are your thoughts? I don't
4 want to say anything because when I try to
5 weigh things in my mind and consider them,
6 sometimes they are taken out of context a bit.
7 But what are your thoughts about your client's
8 presentation at her deposition. I mean, I was
9 reading it and you know, these things sometimes
10 become emotional, I mean you never know how
11 somebody is going to react.

12 That was my impression. Again, not
13 sounding like I am going to favor one side or
14 the other which I don't really care about but
15 that was the sense I was getting.

16 MR. EDWARDS: Your Honor, that is exactly
17 right. I mean, I spent four or five hours with
18 her in pre-deposition --

19 THE COURT: I am sure you did.

20 MR. EDWARDS: -- trying to help her to
21 remain calm. And then during the deposition
22 when these things are coming back up and she's
23 being called a hooker and you're a whore and
24 you're an escort and you're this and that, she
25 reacts how she reacts.

1 THE COURT: I don't think that the whore
2 word was used, at least not in an accusatory
3 fashion, but perhaps that was the manner in
4 which she took it. So I understand the issue
5 taking, without certainly taking issue with the
6 way Mr. Luttier was trying to conduct the
7 deposition, but go ahead.

8 MR. EDWARDS: Right. Well, she obviously
9 took offense to certain of those things. And I
10 did let her testify to her life after
11 Mr. Epstein and her life as an escort and she
12 admitted she was a call girl and she admitted
13 she was an escort.

14 And the questions continued to ask who her
15 johns were and where she worked. And she
16 elected to invoke her Fifth Amendment right to
17 remain silent.

18 One, she feels that she could be getting
19 set up here for some prostitution charges, or
20 at least somebody trying to push in that
21 direction. And on the other side of this, some
22 of the places where she worked as a call girl
23 which she admitted that these are places that
24 if the testimony was displayed to them, hey,
25 she admitted she was a call girl and she

1 admitted she was a call girl there, there may
2 be some repercussions that would involve her
3 safety. And for those reasons, we invoked her
4 Fifth Amendment right to remain silent.

5 In terms of sexual activity, she testified
6 I was a prostitute and I had sex for money
7 which was in compliance with the order. And as
8 long as we stay along those lines, I intend to
9 allow her to testify, you know, to a degree to
10 sexual activity.

11 I thought that your order was pretty clear
12 that within reasonableness, within the bounds
13 of reasonableness they could ask about her
14 sexual activity as that's going to be relevant.

15 And by that, my interpretation was, what I
16 thought was reasonable was, hey, did you have
17 vaginal sex, did you have oral sex, did you
18 have anal sex, and you can ask that with
19 respect to each of the people that we were
20 required to turn over. And we did turn the
21 names of the people over that she had sexual
22 intercourse through her last meeting with
23 Mr. Epstein.

24 But it appears that, and maybe we need to
25 hash this out, that they intend to get more

1 graphic in terms of precise sexual positions
2 with various people that, you know, my client
3 interprets that as being intimidating and
4 harassing and really serving no purpose here,
5 and that certainly has been our contention all
6 along.

7 And we cave to a certain extent that we
8 will allow her to testify that she had sex and
9 in which way, but not when we're talking about
10 where they were in the room and the precise
11 positions that she was in. It's just, it's
12 completely irrelevant at this point.

13 And I don't know if Your Honor remembers,
14 we were before you on this similar order and I
15 think it was started by saying this is not
16 appropriate for motion calendar and that's been
17 my position too. And I don't know if you had a
18 chance to read my response but --

19 THE COURT: I don't, I don't think I did.

20 MR. EDWARDS: Here is what happened, we
21 responded and we provided you with a lot of the
22 material. And you gave it back to us one day
23 and said, here, go work it out. We have been
24 trying to work it out. And then I called
25 Mr. Critton Thursday and Friday and we even

1 talked last night late trying to work it out
2 and I thought we worked it out, but these new
3 orders by the federal court which are certainly
4 not binding on Your Honor, they obviously allow
5 for further discovery, then we feel that at
6 this point in time, we need or should concede
7 to in representation of our clients, that issue
8 is obviously on appeal, post Mr. Epstein's
9 stuff.

10 The pre-Epstein stuff, I was fully
11 prepared to allow her to answer all questions
12 about her sexual activity with these people,
13 but I don't know if you got a chance to read
14 Page 5 through 9 of the deposition where
15 Mr. Critton, he may have a different
16 interpretation of this, but we went back and
17 forth as to whether or not, you know, you're
18 going to agree to keep her anonymous; this is
19 confidential; we're all in agreement here, and
20 because of Mr. Critton's anger directed towards
21 another attorney --

22 THE COURT: Right. I remember.

23 MR. EDWARDS: -- he went through this
24 whole thing that led me to believe that, no,
25 this was going to be on the Internet which

1 caused me to talk to my client and she said,
2 hey, I can't have this kind of stuff; this is
3 not the protection that you told me about.

4 So, that's why we retreated from that. If
5 we can enter into an order that keeps the
6 deposition, the video confidential, if it has
7 to be filed in court, then it can be done in
8 camera. There are ways to do this to keep her
9 name and her face anonymous, and that it not be
10 shown around town or displayed on the Internet
11 or whatever the intentions were. And I am not
12 saying that they were. But then we can go back
13 and those questions can be answered but in an
14 abundance of caution I felt that was necessary
15 for that day.

16 THE COURT: Well, in my review of the --
17 thank you and I appreciate your position.

18 In my review of the deposition
19 transcripts, I guess Mark took some of them.

20 MR. CRITTON: Mark, Mr. Luttier took all
21 of [REDACTED]. We're splitting depositions.

22 THE COURT: And you took [REDACTED].

23 MR. EDWARDS: That's not been taken yet.

24 MR. CRITTON: That's scheduled this week.

25 THE COURT: You mentioned Mr. Critton but

1 you mean Mr. Luttier.

2 MR. EDWARDS: There were several attorneys
3 representing Mr. Epstein. And Mr. Luttier, it
4 was the first time I had met him. I didn't
5 think at the time he was familiar with all the
6 orders, so I had the discussion with
7 Mr. Critton about how this deposition, about
8 the confidentiality.

9 THE COURT: I remember that now.

10 MR. EDWARDS: And then Mr. Luttier, he was
11 asking the questions.

12 THE COURT: I think again without speaking
13 out of turn and hopefully you-all understand me
14 well enough, I have known Mr. Feaman for a long
15 time as well, and I think hopefully he realizes
16 how this thing goes down, I don't care. Just
17 like I don't care in every other single one of
18 the cases that I have. They end the way they
19 end.

20 But I am conscious and sensitive to both
21 sides' rights here when it comes to issues of
22 the sensitive nature of the proceedings and the
23 different competing rights of the parties that
24 we're dealing with here.

25 I think clearly, Brad, you know you have

1 made concessions here that are honorable and
2 have gone a long way in my view to try to make
3 the discovery as reasonable as possible here.

4 At the same time in reading the questions
5 that Mark had asked, I don't recall anything,
6 at least from my recollection now, because I
7 didn't read the deposition lately, but in
8 reading it a week or so ago when we were
9 preparing for another hearing, there was
10 nothing in there that really struck me as being
11 overly incentive to this woman.

12 And I think and I appreciate the fact that
13 you have indicated that my interpretation of
14 her reactions, while understandable under these
15 circumstances, and again, no matter what or who
16 someone may be or how they have conducted
17 themselves in the past, we're all still human
18 beings here and that should not be forgotten,
19 whether it be the Plaintiffs or Defendant.

20 And I try to handle this case on that
21 basis alone, that we're still talking about
22 human beings no matter what the nature of the
23 allegations are, pointing the fingers at,
24 whomever the fingers are being pointed at.

25 So I will grant the motion to compel. I

1 am going to hold off on any sanctions at this
2 time because I think that, respectfully, there
3 was some hostilities that were ongoing on
4 behalf of Mr. Epstein on the part of
5 Mr. Critton that applied to a different
6 attorney -- and I think he had some reasonable
7 grounds to have those feelings as well -- that
8 also may have clouded the proceedings.

9 I'm not certain that while Mr. Epstein may
10 require several lawyers to be there, that it
11 necessarily facilitates the process to make the
12 Plaintiff as comfortable as the Plaintiff may
13 want to be with regard to answering questions.

14 In other words I think it would be far
15 easier and I think more effective if I might
16 say so -- and when I say effective I am not
17 talking about strategies, I am talking about
18 the effectiveness of the process, again so no
19 one gets my intentions wrong or misconstrued --
20 that if Mr. Luttier is going to be the one to
21 take the depositions, then maybe he should take
22 the deposition with the same safeguards that I
23 have provided in a different setting and that
24 is a closed circuit live feed in another room
25 where, Bob, you can be sitting close enough to

1 Mark to where you may need to have access to
2 him with respect to anything that he may be
3 leaving out, though I know he is a very
4 competent lawyer. I am sure he is able to do
5 what he needs to do, but at the break or
6 something you will have that live feed right
7 there available to you.

8 But I think overall that one-on-one with
9 Brad there as well, and not a group of lawyers
10 on this lady's behalf too, to just somehow in
11 my view open up an embarrassing situation for
12 more men to hear, no matter who the men are and
13 no matter how well meaning you know her own
14 attorneys may be. The fewer there are, the
15 better I think.

16 And I think again it's not going to
17 prejudice either side. I think it's, in fact,
18 going to be far more conducive to an orderly
19 and a more forthcoming deposition than the
20 nature of the type of deposition that was taken
21 earlier.

22 Again, I can't and won't order anybody to
23 do it that way because I don't want to
24 unnecessarily onerously burden anybody's rights
25 in terms of who they can have seated with them

1 at the depositions. It's only a suggestion
2 based upon my review of the materials and
3 having hopefully some sensitivity to the nature
4 of the questions that are asked, the more
5 explicit the type of questions I feel the more
6 inclined that this lady or these ladies are
7 going to be able to give full information where
8 there are less men within the room to be
9 witnessing her live testimony.

10 MR. CRITTON: May I, Judge?

11 THE COURT: Sure.

12 MR. CRITTON: I know you haven't seen the
13 video, but I can, I will represent to the Court
14 the video, if you looked at the video and
15 listened to it within five or ten minutes this
16 lady goes off on her own.

17 THE COURT: I can tell that by reading the
18 transcript.

19 MR. CRITTON: Without anything going on
20 and after the motion where she said, I am so
21 scared of Epstein, she said, you come down
22 here; I want you here in this room. All right.
23 She went off on that. And Mr. Luttier was the
24 only one who asked questions. I got involved
25 solely on the issues of, procedural issues.

1 They had Plaintiffs, as they do in all, they
2 had three or four other lawyers not from
3 Mr. Edward's firm.

4 And I would say to the Court, I got
5 sanctioned because an attorney asked
6 Mr. Epstein whether he had a certain shape of
7 penis. All we did was ask questions that
8 complied with the court order, and whether -- I
9 am aware of the anonymity order that's in this
10 case, so obviously I am putting myself at risk
11 as a lawyer by breaching that. And I was
12 unwilling to enter into an argument. But that
13 had nothing to do with Mr. Edwards and his
14 client simply ignoring the court order.

15 And I got sanctioned for one question, an
16 inappropriate question. And in this instance
17 he repeatedly was asked about employers, about
18 her past sexual history.

19 THE COURT: The sanction was because the
20 witness left the deposition. So it wasn't
21 necessarily because of the question. It was
22 because of the witness leaving the deposition.

23 What I am suggesting to you here, Bob, as
24 far as I am concerned is that I think this
25 woman was overwhelmed at that time.

1 And I think that with proper safeguards
2 and also with another attempt by Mr. Edwards
3 and his firm to sit this lady down and explain
4 to her that this will not be tolerated again, I
5 am essentially saying that in this particular
6 case, based upon what I read and the almost
7 immediate nature of the confrontation between
8 counsel, it got off on a bad footing and it
9 only got worse.

10 And I think that this lady, again, without
11 sounding like I am in any way, shape, or form
12 suggestive of prejudging the case and making
13 any type of commentary that would be
14 misconstrued as I mentioned, and I think
15 Mr. Edwards concurred earlier she had what I
16 would perceive to be some type of a melt down.
17 People have bad days from time to time and I
18 think this was one of them.

19 But I think with what I have said today
20 and with the appropriate counseling pre-depo,
21 that this can go on, that we'll proceed in
22 accordance with the manner in which I ruled,
23 and now we have the magistrate's ruling as
24 well, which will obviously be introduced to the
25 client, and they will be advised that the

1 Federal Court has largely concurred with the
2 manner that I have ruled on the issues and that
3 I am going give them another chance to do this
4 appropriately. And for this lady and for these
5 ladies to be deposed accordingly.

6 MR. CRITTON: So, granting the motion to
7 compel. On the sanctions, and so I am clear,
8 Judge, are you withholding on that or are you
9 denying? Just withholding?

10 THE COURT: What I am going to do as I
11 said before in my review of the deposition
12 transcript, I find that there were at least to
13 a degree some sharing of fault as to the
14 breakdown of the deposition.

15 So, for that reason, I am granting the
16 motion to compel that this woman be re-deposed,
17 but I am denying at this time any sanctions
18 inclusive of any striking of pleadings or any
19 contempt of court with the understanding on
20 this record that as long as defense counsel
21 proceeds in the fashion that is contemplated by
22 the case law that we have discussed ad nauseam
23 in the past and in conjunction with my ruling
24 and the ruling of the federal magistrate, that
25 if the Plaintiff acts in a manner which she did

1 at the prior deposition, then I am inclined to
2 re-hear any motions on sanctions at the next
3 attempt to depose her.

4 MR. CRITTON: Fine. I understand, Your
5 Honor.

6 MR. EDWARDS: Your Honor, there was a, as
7 I was instructed by Mr. Critton at that
8 deposition, there was an immediate motion filed
9 to keep the video deposition confidential. And
10 I know that Mr. Critton said that had nothing
11 to do with how it proceeded, but it had
12 everything to do with it.

13 And we're going to run into the same
14 problem unless all parties are on the same page
15 that the anonymity should be respected and that
16 the video tape deposition should remain
17 confidential, and if there is ever a need to
18 file the actual videotape, it be filed in court
19 and be seen in camera.

20 And I don't see any other reason why that
21 videotape should be displayed anywhere else.
22 And as long as that is an order, then this
23 witness, I will instruct her that she can
24 answer these questions that she didn't want to
25 answer otherwise.

1 MR. CRITTON: Judge, I gave him an agreed
2 order two weeks ago. I would like to show it
3 to the Court and --

4 MR. EDWARDS: Two minutes ago.

5 MR. CRITTON: No. This is the same one I
6 gave you two weeks ago.

7 MR. EDWARDS: You took it back.

8 THE COURT: Gentlemen, let's just say that
9 prior to coming before me today it was
10 circulated.

11 MR. EDWARDS: Correct.

12 MR. CRITTON: May I approach?

13 MR. EDWARDS: That's true.

14 MR. CRITTON: And what I wanted was the
15 same courtesies that he wants extended to his
16 client, I want it extended to Mr. Epstein,
17 i.e., when you take Mr. Epstein's deposition,
18 you don't go throwing it on the Internet as
19 some other lawyers have done.

20 THE COURT: All right. The same thing.

21 MR. EDWARDS: And I haven't and I haven't
22 threatened to.

23 THE COURT: I am going to make this a
24 standing order on all these cases. All right.
25 This proceeding and these proceedings before

1 this Court are not going to be an extension of
2 the bad feelings between the parties. While I
3 recognize these are emotionally filled
4 situations on the part of both the Defendant
5 and the Plaintiffs, that these proceedings are
6 not going to act as a conduit to feeding the
7 media frenzy relative to these people.

8 It should be in my view from a
9 professionalism standpoint from both sides --
10 these are very, very, as I mentioned before,
11 sensitive issues for both the Plaintiffs and
12 the Defendant. And the last thing that I
13 believe we can do as lawyers and as
14 professionals to protect our clients' rights
15 and the dignity of the process that they have
16 instituted and are defending is to make this
17 mere chum for the media to utilize to further
18 explode the situation.

19 So, I don't want to see and I am, in fact,
20 ordering that none of these materials are
21 disseminated outside of this court proceeding.
22 And as far as I am concerned that at this
23 juncture the fruits of discovery and
24 particularly anything on videotape shall be for
25 attorney's eyes only, for the Court's eyes

1 only, and for the clients' eyes only.

2 If you need to show witnesses any portions
3 of the videotape, I would suggest that the
4 videotape not be shown, but instead the written
5 transcript be utilized in order to familiarize
6 potential witnesses of other witnesses'
7 statements.

8 MR. CRITTON: Can we add experts to that
9 as well, Your Honor?

10 THE COURT: Experts as well, you mean in
11 terms of allowing them to see the video?

12 MR. CRITTON: The videotape materials,
13 yes.

14 THE COURT: If there are psychological
15 experts, yes.

16 MR. CRITTON: That is what we have.

17 THE COURT: You know, if we're dealing
18 with, you know, human factors experts as far as
19 line of site and the ability to be able to see
20 the opulent nature of Mr. Epstein's home, the
21 answer is no.

22 If we're dealing with psychological
23 experts, yes. So keep in mind as I mentioned
24 before you know, and again I don't want to go
25 too far here and warning anybody, but you know

1 these are issues of professionalism and these
2 are issues that the Court takes very seriously.

3 And I want to maintain my high marks in
4 maintaining professional standards within the
5 courtroom. So, allow me to do that.

6 MR. CRITTON: Judge, we're okay with this
7 order being entered which is basically what you
8 just said. And that's the order that I
9 referenced, order denying the emergency motion
10 because they moved to seal, and it's not really
11 a sealed proceeding, because you give all sorts
12 of notices as the Court is aware, but at least
13 it will provide the protection that the Court
14 just addressed.

15 THE COURT: Okay. Thanks.

16 MR. CRITTON: If I could have back the
17 proposed order or blank order that I gave the
18 Court, Mr. Edwards and I will --

19 THE COURT: I filled that in. See that it
20 comports what you think is good.

21 MR. CRITTON: Judges never do that, Judge.

22 THE COURT: I am letting you guys drive
23 the bus, because that's what I really want it.
24 I think you guys have gotten back into a
25 position now where a lot of rancor and

1 animosity, at least between you-all has
2 subsided and that's good. Keep it up.

3 MR. EDWARDS: And Your Honor, on that we
4 do have a motion to limit the time limit of the
5 deposition set for tomorrow.

6 THE COURT: I will hear that tomorrow
7 because I do have to move on with the other
8 folks.

9 MR. EDWARDS: Thank you, Your Honor. We
10 appreciate it.

11 THE COURT: My pleasure.

12 MR. CRITTON: Just as an after thought,
13 off the record.

14 (A discussion was held off the record.)

15 (The hearing was concluded.)
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C E R T I F I C A T E

STATE OF FLORIDA
COUNTY OF PALM BEACH

I, Cynthia Hopkins, Registered Professional Reporter and Florida Professional Reporter, State of Florida at large, certify that I was authorized to and did stenographically report the foregoing proceedings and that the transcript is a true and complete record of my stenographic notes.

Dated this 5th day of November, 2009.

Cynthia Hopkins, RPR, FPR

