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UNCERTIFIED TRANSCRIPT DISCLAIMER IN THE MATTER OF
EPSTEIN
v.
EDWARDS

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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?

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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

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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

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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

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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."

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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

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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."

1 Those reasons are listed.

2 Again, questioning the legitimacy of
3 the claims.

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

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

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

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

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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 ginned 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 ginned 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

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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
14 presumed to have intended to file claims
15 that were 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 invocations 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 in
12 and say, now, Wait a second. You have put
13 on evidence that these were false claims --
14 I mean, that these were valid claims, but I
15 have the right to come in put on evidence
16 that they were not valid claims. And he
17 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 he knew the cases were
18 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 this
19 important in time there has been a bona fide
20 resolution of his claims in favor of Bradley
21 Edwards. And we proved the cases were not
22 ginned up by proving similar fact evidence.

23 And Your Honor made some reference to
24 this, but I want to be sure that we focus
25 specifically on this aspect of the case,

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

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

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

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

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

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

25 **MR. SCAROLA:** Yes, sir. And they are

1 relevant for multiple reasons.

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

17 And that is true. It is true that all
18 of Brad Edwards' clients acknowledged that
19 they were not passengers on Jeffrey
20 Epstein's private jets. But both the
21 Florida Evidence Code and federal rules of
22 evidence expressly permit the federal rules
23 are very explicit about this: Expressly
24 admit the introduction of evidence with
25 regard to other child molestations in any

1 child molestation claim.

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

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

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

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

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

19 You may proceed.

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

25 However, as soon as Mr. Epstein takes

1 the position, as he has in this
2 demonstrative exhibit that --

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

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

14 Let's take them one at a time.

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

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

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

1 was.

2 **THE COURT:** Okay.

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

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

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

1 understand, Mr. Edwards has been counsel.

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

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

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

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

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

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

22 So tell me what is the intend, then --
23 do you recall the questions that have been
24 asked, if any, regarding this particular NPA
25 that he failed to respond at this point?

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

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

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

1 the non-prosecution agreement.

2 So if that's what he's telling you he
3 intends to prove, I'm simply pointing out to
4 Your Honor -- and I can go through this.
5 It's going to come up in almost every one of
6 these elements -- while I understand the
7 Court's concern about trying to narrow the
8 focus, the door has been blown off the
9 hinges by Mr. Epstein's own complaint. And
10 his lawyers have taken that door and thrown
11 it out the window when they argued to Your
12 Honor that one of the reasons why we
13 believe -- or Jeffrey Epstein reasonably
14 believed that Brad Edwards was a knowing
15 participant in the Ponzi scheme, is because
16 he moved to set aside the non-prosecution
17 agreement after he joined RRA.

18 Now, many aspects of this timeline --

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

22 **MR. SCAROLA:** I'm not sure I understand
23 it either, but this is their exhibit. They
24 are the ones that are saying this was the
25 basis for our making this determination, or

1 for Mr. Epstein reasonably believing that
2 Brad Edwards was a knowing participant in
3 the Ponzi scheme.

4 **THE COURT:** Just for the record, there
5 was never a malicious prosecution claim
6 filed by Epstein --

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

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

9 **MR. LINK:** Yes.

10 **THE COURT:** Juts so that the record is
11 clear.

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

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

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

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

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

20 **MR. SCAROLA:** So all I am responding
21 to -- and maybe this isn't the appropriate
22 time to that -- is the idea that we are able
23 to sanitize this case to the point where we
24 are not going to be talking about a variety
25 of other claims that were being prosecuted

1 by other plaintiffs' lawyers working
2 together with Brad Edwards, and not going to
3 be talking about the Crime Victims' Rights
4 Act case, because as Your Honor has
5 repeatedly acknowledged, motive is going to
6 be very significant. And we intend to prove
7 that Jeffrey Epstein's motive in filing
8 these knowingly false claims against Brad
9 Edwards his motive was to extort Bradley
10 Edwards into abandoning or cheaply
11 compromising the rights of his clients, and
12 abandoning his efforts through the Crime
13 Victims' Rights Act case to set aside the
14 non-prosecution agreement.

15 He had an enormous economic motive, if
16 he could limit his civil exposure, and he
17 had a tremendous motive, in terms of the
18 criminal liability he faced, and the way he
19 chose to address that was, I'm going to make
20 an example out of Brad Edwards, who ha taken
21 a leadership role among all these plaintiffs
22 lawyers, and I'm going to target one of
23 these victims. I'm going to sue them both,
24 and I'm going to show them what happens when
25 you try to take on this billionaire. That's

1 what he was trying to do. Plain and simple.
2 And we are entitled, I respectfully suggest,
3 to be able to prove just how big a motive
4 that was. What's at stake.

5 **THE COURT:** I'm not in disagreement
6 with you.

7 When this went on the board, my first
8 response to Mr. Link and his presentation as
9 to Mr. Epstein's reasons were what? Was
10 that this can be turn around directly to
11 harm potentially Mr. Epstein and provide
12 Mr. Edwards with the motivation. So I'm not
13 in disagreement with you.

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

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

25 As I have indicated earlier, and the

1 reason for my question, was to ensure that
2 my understanding was correct that the
3 principle reason -- or a principle reason
4 Mr. Epstein continues to invoke the Fifth
5 Amendment is because of the pendency of this
6 NPA case, correct?

7 **MR. LINK:** Generally, yes. It's not
8 the pending of the NPA case, but it's the
9 case --

10 **THE COURT:** The potential of a
11 criminal -- further criminal exposure if the
12 NPA gets revoked -- or whatever the
13 terminology is --

14 **MR. LINK:** That's correction, Your
15 Honor.

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

18 **MR. SCAROLA:** Just to clarify that
19 point, if I could.

20 **THE COURT:** Sure.

21 **MR. SCAROLA:** The non-prosecution
22 agreement is an agreement with the U.S.
23 Attorney's office for the Southern District
24 of Florida. It extends immunity to
25 Mr. Epstein and his unnamed co-conspirators

1 for crimes claims committed in the Southern
2 District of Florida.

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

10 What we are talking about is not his
11 right to assert it, it's the consequences of
12 that assertion.

13 **THE COURT:** And to respectfully bring
14 us back into focus on what's before the
15 Court, generally, the invocation of the
16 Fifth Amendment, and bringing out the fact
17 that the NPA in some form or fashion,
18 because of it being a reason for the
19 invocation of the Fifth Amendment, is going
20 to be mentioned during the trial. There's
21 no way around it.

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

23 **THE COURT:** Fine.

24 The question that I am going to pose to
25 you and Mr. Scarola now is how far we are

1 going to go with that agreement and where
2 the 403 analysis has to focus. So --

3 Not now. When you have your
4 opportunity.

5 Mr. Scarola.

6 **MR. LINK:** Champing at the bit, Your
7 Honor.

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

17 Now, some of Mr. Epstein's (sic)
18 clients -- in fact, I think all three of
19 them -- are identified in the
20 non-prosecution agreement. So Mr. Epstein,
21 as part of the non-prosecution agreement,
22 agrees to compensate each of these 40 people
23 under specific circumstances. And that gets
24 us into a discussion as to why the federal
25 lawsuit was filed. And this is something

1 that we have referenced briefly in argument
2 before Your Honor earlier. But --

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

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

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

23 And Mr. Epstein clearly knows that
24 Mr. Edwards is lead counsel in this Crime
25 Victims' Rights Act case. He clearly knows,

1 because he's a participant in that case. He
2 has intervened in the case. He knows that
3 the consequences of that Crime Victims'
4 Rights Act case could be that he loses the
5 immunity that he negotiated with the U.S.
6 Attorney's Office.

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

14 **THE COURT:** So the suggestion, I guess,
15 from the defense, the malicious prosecution
16 claim of Mr. Epstein is that he found it
17 necessary to file the lawsuit -- strike
18 that.

19 Yeah. He found it necessary to file
20 the lawsuit against Rothstein, Edwards and
21 L.M., because he felt that by doing this
22 unsealing it was motivation, it was
23 exposure, it was public information so as to
24 allegedly gin up these three claims held by
25 the three plaintiffs with the initials and

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1 the Jane Doe.

2 **MR. SCAROLA:** Yes.

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

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

11 **THE COURT:** Pardon me?

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

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

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

15 So that's essentially what I am
16 understanding count -- point counterclaim.

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

18 My only point is, we can't avoid
19 getting into that. As soon as they raise
20 it, we can make the counterpoint. We can
21 explain why it was done. And the same thing
22 is true with regard to everything else that
23 is on this list. The claim for
24 \$50 million --

25 **THE COURT:** I'm not sure that they even

1 have raise it for it to be relevant.

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

5 **THE COURT:** Well, I am even talking
6 about probable cause.

7 **MR. SCAROLA:** And probable cause. Yes,
8 sir. I agree. We can prove probable cause.
9 We can prove what Mr. Epstein knew. We can
10 prove his motives, and we can prove malice
11 as part of proving probable cause.

12 But I don't think it's necessary to
13 ever parse out is this relevant to probable
14 cause only, is it relevant to malice only.
15 If it's relevant to one or the other it
16 comes in.

17 **THE COURT:** And the 40 individuals that
18 you are contending and that's the subject to
19 this NPA are all minors?

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

21 And what the federal law says is
22 \$150,000 per molestation. That's what the
23 federal law says. And what the NPA says is
24 if these claim are brought pursuant to the
25 federal statute, you are not going to

1 contest your liability.

2 Now, what they did contest is whether
3 it's 150,000 per molestation, or 150 cap.
4 So once you pay the 150,000 you get to
5 molest these kids as many times as you want
6 to.

7 **THE COURT:** Per claim?

8 **MR. SCAROLA:** Yes. So that was an
9 issue. But that's the reason why -- and the
10 jury is going to need to hear this -- why
11 does Brad Edwards file a 256-page -- or 256-
12 paragraph -- whatever it is -- or 256
13 counts --

14 **THE COURT:** 254-page --

15 **MR. SCAROLA:** Whatever it is. Why does
16 he file this lengthy federal case? Was that
17 really as an effort to try to gin up these
18 cases for purposes of participating in a
19 Ponzi scheme or was there an independent
20 legitimate basis for doing what he did?

21 **THE COURT:** Of course, the interesting
22 part of that is from the timeline, the
23 complaint filed -- the federal complaint,
24 234-page federal complaint was filed after
25 the settlement of three cases.

1 **MR. SCAROLA:** No, sir. I don't think
2 so.

3 **MR. LINK:** No.

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

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

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

16 **THE COURT:** There were statute of
17 limitations issues. Again, another
18 counterpoint.

19 **MR. SCAROLA:** Exactly correct.
20 Absolutely.

21 I am only suggesting to Your Honor that
22 it is very difficult to be able to say as a
23 blanket matter, I am not going to let in
24 evidence of these other claims.

25 **THE COURT:** Again, I am not taking that

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

13 But again, when we look at it from the
14 standpoint of both sides trying to balance
15 this as best I can under 403.

16 On the one hand we have
17 Mr. Edwards taking strike that --
18 Mr. Epstein taking the position that doing
19 what was done by Jane Doe through
20 Mr. Edwards as counsel was an attempt to
21 publicize and to sensationalize the
22 circumstances so as to increase the value of
23 at least the claims that were held by the
24 Rothstein firm.

25 **MR. SCAROLA:** Which I think is what

1 every lawyer is supposed to do within the
2 bounds of propriety, obviously. But our job
3 is to maximize the value of our clients'
4 claims.

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

17 So again, my ruling on that is if there
18 are questions that have to do with this
19 issue, globally they will be allowed to be
20 asked subject to further argument as it
21 relates to the multiplicity of the numerous
22 victims that we are dealing with here as
23 alleged.

24 Same as it goes with this 234-page
25 federal complaint. If there were any

1 questions that were asked of Mr. Epstein
2 where he refused to answer on Fifth
3 Amendment grounds, I find that the
4 information would be relevant. Therefore,
5 his failure to answer would be -- would be
6 able to be utilized if such questions were
7 asked of him regarding the 234-page federal
8 complaint filed on behalf of L.M. by
9 Mr. Edwards.

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

20 So I want to make it clear that we
21 don't consider, nor do I understand Your
22 Honor to be ruling that we would only be
23 limited to asking questions already asked of
24 him in his deposition. We would permitted
25 to ask him any question, relevant and

1 material to the claims that he has made
2 against Mr. Edwards. And that as has been
3 announced, we know he will be invoking his
4 Fifth Amendment right.

5 **THE COURT:** With the caveat and
6 understanding that any reasonably sensitive
7 type of question that is going to be
8 construed as graphic -- reasonably construed
9 as graphic, going to be questions about
10 global conduct, should be run by the court
11 first by way of a proffer.

12 **MR. SCAROLA:** I understand the Court's
13 concern. And I --

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

21 **MR. SCAROLA:** I am happy to make the
22 commitment to the Court, because I
23 understand your concern, and I recognize the
24 sensitivity of these issues.

25 **THE COURT:** Thank you.

1 **MR. SCAROLA:** I will make a commitment
2 to the Court that we will proffer in advance
3 any question that we reasonably anticipate
4 will invoke a Fifth Amendment privilege.

5 **THE COURT:** All right. Let's move on
6 then. Again, let's refocus back to some of
7 these issues that are directly before the
8 Court.

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

12 **THE COURT:** Briefly.

13 **MR. LINK:** Thank you. Very briefly.

14 I want to be clear that we have not
15 heard the questions, so I can tell you,
16 without knowing what the question is,
17 whether we will raise the Fifth Amendment or
18 not. My commitment to the Court was the
19 questions that were asked already were not
20 going to change the assertion of the Fifth.

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

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

24 **THE COURT:** Again, it is with the same
25 caveat that I explained earlier, and that

1 is, I am going to have both sides provide me
2 with questions that -- well, really it would
3 start with Mr. Edwards and Mr. Scarola
4 providing your side with questions -- the
5 specific questions that were asked that
6 Mr. Scarola in good faith believes he will
7 be asking at trial that have already been
8 subject to invocation of the Fifth Amendment
9 and/or attorney-client privilege or any
10 other privilege, for that matter.

11 All I've see are Fifth Amendment ad
12 attorney-client privilege. There may have
13 been a Fourteenth amendment or another
14 amendment.

15 **MR. SCAROLA:** Those questions will be
16 elicited through Mr. Epstein's deposition,
17 Your Honor.

18 **THE COURT:** So what I'm trying to,
19 again, give you global guidance as to how
20 the Court intends to rule on some of these
21 issues, but at the same time reserving the
22 ability to be able to review the specific
23 questions that with the Court's global
24 guidance today are still subject to debate
25 as to whether or not they are going to be

1 asked.

2 For example, Mr. Scarola may have a
3 list of 30 questions that after he has
4 culled through the testimony he intends to
5 ask -- strike that. He intends to publish
6 before the jury by way of deposition
7 utilization.

8 If you find that any or all of those
9 questions are outside the parameters the
10 court has provided to you today, then it
11 will be incumbent upon you to bring those
12 before me and to --

13 **MR. LINK:** Judge, I understand. That's
14 a fair procedure.

15 **THE COURT:** -- and I will entertain
16 further argument or I may not entertain
17 further argument. I may just rule on it
18 pursuant to the law that I have and what I
19 perceive to be the appropriate rules of
20 evidence.

21 **MR. LINK:** Understood. That procedure
22 is very clear to me.

23 **THE COURT:** So let's go back now -- I
24 want to give Mr. Scarola his opportunity --
25 is there anything else specifically that we

1 need to talk about now on Fifth Amendment
2 issue? Because most of these other exhibit
3 matters we can handle those -- we can handle
4 them today, if you'd like to. But we don't
5 need to handle them in conjunction with the
6 Fifth Amendment issue.

7 Things like massage tables and messages
8 from notepads in Epstein's homes, flight
9 logs, things of that nature, don't really
10 get into necessarily Fifth Amendment issues.

11 **MR. LINK:** We agree.

12 **THE COURT:** So why don't you go ahead,
13 Mr. Link. I want to give you an opportunity
14 to rebut.

15 **MR. SCAROLA:** Your Honor asked if there
16 were other specific matters relating
17 directly to Fifth Amendment. And the
18 financial discovery raises Fifth Amendment
19 issues that need to be discussed.

20 **THE COURT:** Okay. We can do that after
21 we get finish with Mr. Link's rebuttal on
22 the global Fifth Amendment issues that we've
23 dealt with thus far. Thank you.

24 **MR. LINK:** Okay, I'm going to pick up a
25 couple pieces of -- Your Honor, I just want

1 to touch on a couple pieces of the
2 presentation, then I will go back to where I
3 want to go.

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

13 **THE COURT:** For the same reasons that
14 we discussed earlier -- Mr. Scarola was
15 rather blunt about it -- and that is that
16 doing that will enhance the value of the
17 claims made by the three pseudonym
18 plaintiffs.

19 **MR. LINK:** Maybe.

20 **THE COURT:** It may be. And I grant you
21 that. But it also could inflame
22 Mr. Epstein, potentially, as well. It also
23 could provide Mr. Epstein with bona fide
24 good faith motivation that he thought that
25 this was resolved and now it's being opened

1 up again, so I can see both sides.

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

9 What Mr. Scarola wants to do and what
10 Mr. Edwards told us in his deposition, is
11 they want to show the world that those
12 allegations were untrue.

13 **THE COURT:** Which allegations?

14 **MR. LINK:** The allegations Mr. Epstein
15 filed against Rothstein and Edwards.

16 **THE COURT:** That the allegation as it
17 relates to the claims by the three
18 pseudonyms plaintiffs?

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

20 **THE COURT:** Start again. I am not
21 following you.

22 **MR. LINK:** So there was a lawsuit filed
23 by Mr. Epstein. He sued Rothstein and he
24 sues Edwards.

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

1 **MR. LINK:** And L.M. In that claim, if
2 you read it fairly, you will not find an
3 allegation that says that the three
4 plaintiffs Mr. Edwards represented
5 fabricated their claim. What you will find,
6 Your Honor, when you read it, is that it
7 says that those three cases were used to
8 entice investors to invest in other cases.
9 They also say in this complaint very
10 clearly, that those three cases -- those
11 three cases, the value of them -- the
12 value -- not the legitimacy of filing
13 them -- the value.

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

22 **MR. LINK:** Yes. I agree with that.
23 And I think any questions about that --
24 right -- any questions about that would go
25 to whether that statement is true. But it

1 doesn't say -- it says they were weak. It
2 doesn't say that they were ginned up. It
3 doesn't say they were fabricated. It
4 doesn't say any of the words that
5 Mr. Scarola told you it said. It said that
6 they should have known -- remember what I
7 said, it follows the \$500 million paragraph.
8 If you relate it to the \$500 million, they
9 should have known that these cases weren't
10 worth \$500 million.

11 But it doesn't not say anywhere in this
12 complaint that Mr. Edwards fabricated those
13 three cases in 2008. It doesn't say that
14 anywhere. It doesn't say it anywhere.

15 I absolutely agree -- I absolutely
16 agree it says they were used by Rothstein to
17 attract investors. Rothstein lied about
18 those cases.

19 Mr. Edwards candidly told us in his
20 deposition that Rothstein used his cases --
21 Mr. Edwards' cases -- and fabricated claims
22 about them in settlements.

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

24 **MR. LINK:** The point is this. What
25 Mr. Scarola wants to try to the jury is this

1 case right here. He wants the jury to hear
2 the case that settled, these three folks to
3 get on the stand and say that they were
4 physically abused when they were minors.
5 And if that is true -- that's what he tells
6 us -- plaintiff Edwards starts -- my proving
7 the truth of the claims he brought on behalf
8 of them.

9 If he does that, if he proves their
10 underlying claim, he now has lack of
11 probable cause. It's a disconnect. Because
12 lack of probable cause has to do with
13 Edwards' (sic) state of mind at the time.

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

15 **MR. LINK:** Epstein. We have all done
16 it four times.

17 Epstein. Epstein's state of mind, and
18 only his state of mind. I am competent if
19 this case was tried -- this is the Epstein
20 versus Rothstein and Edwards -- that
21 Mr. Edwards will get on the stand, and he
22 would tell the jury all the reasons why he
23 did what he did. And they may believe him.
24 But whether he had a legitimate reason or
25 not, isn't relevant to whether Epstein had

1 probable cause.

2 **THE COURT:** Let's focus on the Fifth
3 Amendment issues.

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

17 **THE COURT:** If you asking me, as
18 opposed to being rhetorical, I can answer it
19 simply.

20 **MR. LINK:** Both.

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

23 **MR. LINK:** Yes.

24 **THE COURT:** His strike, if you will, is
25 a preemptive one on virtue filing of this

1 lawsuit.

2 **MR. LINK:** That could be his motive. I
3 agree.

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

5 **MR. LINK:** Well, but that goes to
6 motive not probable cause. Remember, the
7 motive ties into the malice element.

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

15 And, in my respectful view, one of
16 those motives -- if you're asking me --
17 which you have -- and you suggested that you
18 have --

19 **MR. LINK:** I have. Go ahead. I need
20 teaching all the time.

21 **THE COURT:** It's not teaching. It just
22 a common sense logical thought that the
23 reason why you bring a lawsuit like this
24 that constitutes somewhere in the
25 neighborhood of 35 pages where you are

1 claiming after this -- shortly after this
2 law firm blew up --

3 **MR. LINK:** Correct.

4 **THE COURT:** -- and everybody is
5 scrambling. Nobody knows what's going on.
6 Federal agents are raiding the offices,
7 including, I presume, Mr. Edwards' office.

8 **MR. LINK:** Yes. They took the Epstein
9 case boxes.

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

16 **MR. LINK:** 12/7/09.

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

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

20 **THE COURT:** A week before. Exactly.
21 Excuse me. A week before. Razorback
22 complaint is filed 11/20/09. Things are,
23 what I would, again, perceive, if you are
24 asking me --

25 **MR. LINK:** I am.

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

3 **MR. LINK:** I agree.

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

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

16 **THE COURT:** With probable cause.

17 **MR. LINK:** Probable cause. Because
18 here is what probably cause --

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

21 **MR. LINK:** When he had the most evil of
22 intent.

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

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

25 **THE COURT:** You asked me what my

1 perception could be --

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

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

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

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

15 **MR. LINK:** And I appreciate it. And I
16 appreciate it. And I'm agreeing with you,
17 when you look at the element with what you
18 just described could potentially be evidence
19 of malice. According to the jury
20 instruction and the case law is it cannot be
21 evidence of probable cause.

22 Here is one of the disconnect. I heard
23 Mr. Scarola tell you the two statements he
24 wants to focus on. What he is telling you
25 in a subtle way is that he wants to have a

1 defamation case. Publication of two
2 statements, falsity. And then he said to
3 you, then the burden shifts, which it does
4 in a defamation case. He used the
5 defamation words: truth with good motive.
6 This is not a defamation case.

7 It doesn't matter. It doesn't matter
8 if they have all the evidence in the world
9 that they would have won, they would have
10 had a land-slide victory, if the Epstein
11 versus Rothstein and Edwards case was tried.
12 It doesn't make any difference, because the
13 focus has to be in December 2009 was there
14 enough information.

15 I'm not saying, Judge, if you were the
16 lawyer if you would have brought it, or
17 whether I would have brought it, but it was
18 brought. And question is, was there enough
19 information available that a reasonable
20 person would -- could have reasonably
21 brought this claim when they did.

22 The timing can be suspect. The motive
23 can be suspect. The malice can be suspect.
24 But if there's enough information and
25 logical inferences, then you don't have a

1 failure of probable cause.

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

13 So then if we open the door to 40 other
14 people, we are going to have 43 sexual
15 molestation cases.

16 **THE COURT:** I'm not suggesting we are
17 doing that. Again, this is not the work of
18 Mr. Scarola. This is not the work of
19 Mr. Edwards. This is not the work of you or
20 Ms. Rockenbach. This is the work of
21 Mr. Epstein --

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

23 **THE COURT:** -- making these allegations
24 in subparagraph H, 1 through 3 -- some weird
25 tiny numbers. H, 1 through 3. He's, with

1 all due respect, stuck with these
2 allegations. He's stuck with this lawsuit.
3 He's stuck with the claims are contained
4 therein and the allegations that are
5 contained therein.

6 **MR. LINK:** Absolutely. I agree
7 100 percent. But what are we stuck with?
8 That's the question. Are we stuck trying
9 this case, Judge? Or are we stuck trying to
10 prove to a jury that based on the
11 information that existed, that we had
12 reasonable basis to bring a civil
13 proceeding?

14 Because that's what it talks about. It
15 doesn't say what claim did you bring? What
16 count did you bring? What statements did
17 you bring? It is a civil proceeding.

18 **THE COURT:** Right now, though, Mr.
19 Link, we're concentrating on the Fifth
20 Amendment issues. There is not a motion in
21 limine in front of me at this juncture as to
22 the 40 other -- or the 40 in total alleged
23 victims. There is not a motion in front of
24 me regarding how far we are going to go with
25 regard to the trial --

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

2 **THE COURT:** In regard to the claims of
3 the three litigants represented by
4 Mr. Edwards.

5 **MR. LINK:** Your Honor is 100 percent
6 right. I appreciate you indulging me to
7 answer some of the questions that's were on
8 my mind. And I am appreciate that.

9 Where we would like to go next, Your
10 Honor, if the Court has time -- or we can
11 take it up next time -- are those things
12 that were on the exhibit list and witness
13 list.

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

19 **THE COURT:** Are they listed as
20 witnesses?

21 **MR. LINK:** Pardon me?

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

23 **MR. LINK:** They have not been deposed
24 in this case.

25 **THE COURT:** I presume they are listed

1 as witnesses.

2 **MR. LINK:** They are listed as
3 witnesses.

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

5 **MR. LINK:** Were they deposed in this
6 case?

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

8 **MR. LINK:** I'm sorry.

9 **MR. SCAROLA:** One of them was deposed
10 in this case just recently.

11 **MR. LINK:** I thought that was -- oh,
12 yes. You're right. Sorry about that. One
13 out of two.

14 **MR. SCAROLA:** And the only one noticed
15 to be deposed.

16 **MR. LINK:** And that's an issue that you
17 told us to come back to you on, Judge.
18 Because if they are going to called -- I
19 don't know if they are -- but if they are
20 going to be called, then I would like the
21 opportunity to depose those two.

22 **THE COURT:** What I said somewhat off
23 the cuff, but not as articulate as the
24 Second District Court of Appeal in the case
25 of Liabos versus Harman -- L-I-A-B-O-S.

1 Harman, H-A-R-M-A-N -- 215 So.2d 487 was
2 what I intended earlier, just so that we are
3 all clear on the issue of probable cause, at
4 least as it relates in this case in my
5 relatively quick word search.

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

18 **MR. LINK:** Yes. That's right. We are
19 in complete agreement, which is, if the
20 facts we say we relied on in bringing this
21 claim -- if there's a dispute about one of
22 those facts and whether we rely on it, then
23 we would have a jury trial, and the jury
24 would determine whether we relied or not.
25 The Court would then take the 10 pieces of

1 information that was relied on and decide if
2 that was enough.

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

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

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

19 **MR. LINK:** Thank you, Your Honor. We
20 appreciate it.

21 **THE COURT:** Thanks.

22 What I would like to then get into next
23 are some of these exhibits. If we can deal
24 with those now, let's go ahead and do that.
25 We will use the next hour or to take care of

1 those please.

2 **MS. ROCKENBACH:** May I approach the
3 bench, Your Honor?

4 **THE COURT:** Sure.

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

16 Some of the examples that Your Honor
17 had mentioned, I think, was a massage table,
18 which was number 59. But if we start at the
19 front, there is an order confirmation from
20 Amazon for the purchase of a book entitled
21 "Slave Craft: Workbook for Erotic Slaves and
22 their Owners." Completely irrelevant,
23 prejudicial, has zero probative value
24 whatsoever to do with the malicious
25 prosecution action.

DRAFT ONLY !!!! NOT PROOFREAD

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

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

19 Based on the rulings that you have made
20 this morning, I believe that Mr. Scarola
21 probably would agree not to refer to
22 Mr. Epstein as convicted child molester,
23 billionaire pedophile or the like.

24 **THE COURT:** Well, billionaire
25 pedophile, I agree is subject to argument.

1 But convicted child molester, Mr. Scarola.

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

10 **THE COURT:** Did he take a plea of
11 guilty?

12 **MR. SCAROLA:** Yes. He entered a plea
13 of guilty to two felonies. He is a
14 registered sex offender here in --

15 **THE COURT:** I just want to make sure it
16 was a guilty plea, as opposed to a nolo
17 or --

18 **MR. SCAROLA:** No. It was a guilty
19 plea, Your Honor.

20 Under the non-prosecution agreement
21 with the federal government, he was required
22 to plead guilty to two state court felonies.

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

25 **MR. GOLDBERGER:** Thank you, Your Honor.

1 Just for a point of clarification, neither
2 of the counts that Mr. Epstein pled guilty
3 to are, quote, those that suggest that he's
4 a child molester. It was procuring an
5 underaged for prostitution. That's the
6 count.

7 So the suggestion by counsel for the
8 counter-plaintiff that he is somehow a child
9 molester, there's just no basis in the
10 guilty plea that he entered.

11 Now, he is a registered sex offender
12 subject to a 403 analysis. Perhaps counsel
13 will be able to go there. But there's no
14 evidence to support, based on the documents
15 and on the guilty plea that he's a child
16 molester. He simply didn't plea guilty to
17 anything factually related to that.

18 **THE COURT:** Tell me exactly what he
19 pled guilty to.

20 **MR. GOLDBERGER:** Let me get the
21 document, if I can --

22 **THE COURT:** Sure.

23 **MR. GOLDBERGER:** -- Your Honor, so
24 there's no mistake. Solicitation for
25 prostitution, procuring someone under the

1 age of 18 for prostitution.

2 **MR. SCAROLA:** Three someones, which
3 made it a felony, correct?

4 **MR. GOLDBERGER:** Yeah. Solicitation of
5 prosecution requires three individuals
6 before it goes from a misdemeanor to a
7 felony.

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

10 **MR. GOLDBERGER:** That's the other count
11 that he pled guilty to. Solicitation of
12 prostitution of someone under the age of 18.

13 The solicitation for prostitution, in
14 order to make that a felony it requires
15 three separate incidents.

16 But none of those success factually in
17 any way the facts that he was a child
18 molester. That's the point that I think my
19 co-counsel is trying to make.

20 **THE COURT:** Convicted child molester is
21 the term that was used.

22 **MR. GOLDBERGER:** And that's simply not
23 factually correct.

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

25 **MR. SCAROLA:** Since we are dealing with

1 this in the context of Fifth Amendment
2 assertions --

3 **THE COURT:** No, we are dealing with
4 this as a matter of a portion of the omnibus
5 motion in limine.

6 **MR. SCAROLA:** Then I don't have any
7 further comment.

8 **THE COURT:** The objection is sustained.
9 The motion is granted.

10 As I understand it in reviewing the
11 case law recently, the guilty plea would be
12 admissible. The registration of sex
13 offender, I am going to need some additional
14 briefing on.

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

20 **THE COURT:** I can only go through so
21 much material within the time --

22 **MS. ROCKENBACH:** I know.

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

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

2 (A discussion was held off the record.)

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

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

14 **MR. SCAROLA:** Of minors.

15 **THE COURT:** My understanding of the
16 case law it's clear that the plea is
17 admissible.

18 **MS. ROCKENBACH:** Your Honor, maybe we
19 should take that up. And I guess we are
20 going to skip exhibits for a minute, because
21 this is too important to just gloss over.

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

24 **MS. ROCKENBACH:** Probably not the way
25 we would like, but we don't want to paper

1 the court.

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

12 So I'm not sure -- Your Honor is
13 correct, this has not been fully briefed,
14 because all that I anticipated were these
15 two very inflammatory terms.

16 **THE COURT:** The distinction, though,
17 Ms. Rockenbach, that I would respectfully
18 make -- and I'm not going to suggest that
19 I'm an authority on this particular area --
20 is that typically that question is asked for
21 one of credibility. Meaning, have you ever
22 convicted of a felony or a misdemeanor
23 involving moral turpitude.

24 **MS. ROCKENBACH:** Correct.

25 **THE COURT:** If the answer is yes, the

1 next question is how many times. If there
2 is any falsity to any of those -- either of
3 those responses, then the requesting party
4 has the opportunity to provide the Court,
5 and potentially the jury, with
6 counter-evidence typically in the form of
7 certified copies of convictions.

8 **MS. ROCKENBACH:** That's correct.

9 **THE COURT:** Now, that's a lot different
10 than in this case, where we are not
11 necessarily talking about merely
12 credibility. What we're talking about what
13 in essence -- if not the heart, certainly
14 near the center of the entire case.

15 In other words, but for the fact
16 that -- at least, but for one of the facts
17 that Mr. Epstein was convicted, the context
18 of a malicious prosecution claim and the
19 context of the contentions that would be
20 made by Mr. Edwards relating to the
21 malicious prosecution claim would be that
22 his conviction and his legal peril were part
23 of his reasons for bringing the case against
24 Mr. Edwards.

25 So this is not merely an issue of

1 testing credibility of any given witness.
2 As I understand it, just about any witness
3 can be asked those questions. This is more
4 of an issue of a fact central to the
5 presentation of the case.

6 **MS. ROCKENBACH:** Your Honor,
7 Mr. Epstein's guilty plea was June 30th,
8 2008. His lawsuit against Mr. Edwards was
9 December 7th, 2009. So the guilty plea was
10 entered at least a year and a half before he
11 sued Mr. Edwards.

12 And my concern with this under the
13 impeachment part of the Florida Evidence
14 Code 610.5 -- I am going to quote from
15 Ehrhardt, 2016 version, "When a witness who
16 testifies as a criminal defendant there is a
17 danger" -- we are not even a criminal
18 defendant. We are not even trying the
19 criminal case -- "but there's danger that
20 the jury will consider the convictions,
21 which are admitted only to impeach as
22 evidence the defendant is a bad person. The
23 concern is greater when there are number of
24 prior convictions." There's on one.

25 But the point is, this is bad character

1 evidence under 90.404. It's improper
2 impeachment under 90.610. And we absolutely
3 oppose and object to the guilty plea coming
4 into evidence. It has no relevance to the
5 issue of why my client filed a malicious
6 prosecution action a year and a half after
7 he pled guilty.

8 **THE COURT:** Mr. Scarola.

9 **MR. SCAROLA:** Ms. Rockenbach is
10 incorrect that we would seek to admit this
11 evidence solely under 90.610. Because under
12 that provision of the evidence code, we
13 would be restricted to, Have you ever been
14 convicted of a crime? How many times? I
15 understand that entirely. And that's
16 strictly a matter of credibility.

17 However, the issue that we have the
18 burden of proving is an issue of probable
19 cause. And that involves, as we have
20 explained in great detail, an analysis of
21 what Mr. Epstein knew. Part of what
22 Mr. Epstein knew when he sued Bradley
23 Edwards is that he was guilty of multiple
24 crimes involving sexual activity with
25 minors. That's part of what he knew. He

1 pled guilty to that.

2 Now, he was asked in deposition, Who
3 are the minors that you pled guilty to?
4 Objection. Fifth Amendment. I refuse to
5 answer on the ground that it may tend to
6 incriminate me. He refused to identify
7 those people.

8 Well, we can draw an adverse inference
9 from that. And the adverse inference we can
10 draw is that the three people were L.M.,
11 E.W. and Jane Doe.

12 Now, he can get up and try to rebut
13 that adverse inference through something
14 other than his own testimony, because
15 through his own testimony he has foreclosed
16 any further evidence coming from him. But
17 if there's some independent source where he
18 can suggest to the jury that this is not a
19 proper inference to draw. He wasn't
20 pleading guilty to crimes committed against
21 these three young women -- these three
22 children at the time -- then he can do that.
23 But it is relevant and material to the issue
24 of probable cause because he admitted sexual
25 offenses relating to children and refuses to

1 identify in the context of this case who
2 those children are.

3 So this isn't just propensity. This
4 isn't bad character. This is evidence that
5 is directly material to an element of this
6 case that we are obliged to prove.

7 So your Honor's reaction was absolutely
8 correct. There are other reasons why this
9 comes in in the context of this case.

10 Thank you, sir.

11 **MS. ROCKENBACH:** Your Honor, may I
12 reply?

13 **THE COURT:** Sure.

14 **MS. ROCKENBACH:** In Mr. Epstein's
15 deposition March 17th, 2010 on page 103,
16 Mr. Scarola asked him, line 23, "Who is the
17 minor that you procured for prostitution?
18 And the answer is, "I do not know."

19 Let's get back to the probable cause
20 issue.

21 **MR. SCAROLA:** I'm sorry. I do stand
22 corrected. I am remembering now that that
23 was his response. It wasn't the Fifth
24 Amendment assertion. It changes none of the
25 arguments I've just made.

1 **THE COURT:** I understand.

2 **MS. ROCKENBACH:** Your Honor, the issue
3 of whether my client pled guilty to
4 prostitution with one minor or not is not
5 relevant to what facts and circumstances.
6 And that's the phrase of all the cases
7 reported. What facts and circumstances were
8 known to Mr. Epstein when he filed his
9 malicious prosecution. And the Wright
10 versus Yorco (phonetic) case. We haven't
11 talking about it, but --

12 **THE COURT:** I'm familiar with it.

13 **MS. ROCKENBACH:** I'm sure, Your Honor.
14 -- both sides cited it. And it talks
15 about what constitutes that probable cause.
16 The public record. The public record. So
17 my client can rely on two parts. Rely on
18 firsthand knowledge or trustworthy
19 information provided to him. That's the
20 Razorback lawsuit. That's Mr. Bill Scherer,
21 the Fort Lauderdale attorney being quoted by
22 the newspaper as saying that Epstein --
23 Rothstein didn't act alone. It's the head
24 of the South Florida FBI saying this was not
25 a one-man show.

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1 The issue of my client's plea of
2 guilty, has nothing to do with his probable
3 cause of whether he believed Mr. Edwards was
4 in connection with Mr. Rothstein in puffing
5 up the claims.

6 **THE COURT:** One thing I appreciate the
7 appellate courts doing recently is writing,
8 somewhat extensively, on the fluidity of
9 motions in limine, and the fact that until
10 the Court can digest at trial all of the
11 facts that are being presented in putting
12 these things into context, it makes it
13 somewhat difficult, and recognizes the trial
14 court's difficulty in dealing with some of
15 these motions and some of these issues
16 without context.

17 But, in my respectful view, the flaw of
18 the argument from its inception -- again,
19 I'm not trying to be disrespectful -- but
20 the flaw in the argument is what I perceive
21 to be a lack of recognition of, not only
22 Mr. Epstein's rationale for filing his suit,
23 but the focus, or lack thereof, on
24 Mr. Edwards' responsibility and burden -- a
25 strict one, and a strong one according to

1 onerous -- used by one of the cases in being
2 able to prove probable cause here.

3 And Mr. Scarola has used in his
4 briefing this building blocks approach. And
5 I think the same type of analogy or picture
6 can be utilized here when speaking about the
7 motive. What was the probable cause in
8 actuality from the counter-plaintiff
9 Edwards' standpoint for Epstein doing what
10 he did.

11 As I indicated before, but didn't use
12 the analogy, what you and Mr. Link provided
13 to the Court provides, not only building
14 blocks for potentially Mr. Epstein's
15 probable cause, but likewise provides
16 building blocks for Mr. Edwards' proving
17 that he did not have probable cause.

18 And as far as the Court is concerned,
19 if the guilty plea came after he filed suit,
20 then there might be some reasonable argument
21 to separate it out and say, Judge, he hadn't
22 even filed suit -- the suit was filed
23 -- strike that.

24 He hadn't pled guilty. The guilty plea
25 came three years after he filed this suit

1 for malicious prosecution, then it would
2 probably be a relevancy argument that may or
3 may not win the day.

4 But when looking at it from a building
5 block type of analysis, as I have in the
6 most simplest terms, in looking at it from
7 both sides, which I am incumbent to do, as
8 Mr. Scarola alluded to, this is but one item
9 that could be argued to have fueled
10 Mr. Epstein to have filed this lawsuit, thus
11 making it relevant.

12 Now, the fluidity issue that I spoke
13 about is, I'm willing to look at it, again,
14 if there's a case on point that specifically
15 says otherwise. But for purposes of this
16 particular matter, the Court would find
17 absent the production of a case that would
18 say otherwise, that Mr. Epstein's guilty
19 pleas -- I understand it's combined, so I'm
20 not suggesting there were more than one
21 combined plea -- would be relevant, that it
22 would be relevant to the issue of probable
23 cause, and it would be relevant,
24 potentially, to the issue of malice.

25 And that, again -- with the Court

1 looking at it from both sides, and analyzing
2 it from both sides, it could be used by
3 Mr. Epstein. It could be used by
4 Mr. Edwards. But it provides, at least,
5 some relevancy, defined again as proving or
6 tending to prove or disprove a material
7 fact. The material fact is the element of
8 probable cause and perhaps malice.

9 So again, I am going to rule that they
10 would be admissible.

11 Next issue, please.

12 But again, we are going to completely
13 and entirely stay away from any type of
14 pejorative comment. I understand that
15 sometimes things are said in the heat of
16 deposition that would never be repeated at
17 trial. Again, I'm certainly ordering that
18 that not take place.

19 All right. We want to go back to some
20 of these -- in the time that we have left,
21 let's go back to some of these exhibits and
22 see if we can work through them.

23 **MS. ROCKENBACH:** Thank you, Your Honor.
24 We had identified and have highlighted,
25 starting with number three, photographs and

1 information of Mr. Epstein's homes, planes
2 automobiles. I'm not sure what relevance
3 that would have as to why he filed a
4 malicious prosecution action.

5 **THE COURT:** Let's take them one at a
6 time.

7 Mr. Scarola, what's your position?

8 **MR. SCAROLA:** His homes and his
9 automobiles are evidence with respect to his
10 pecuniary circumstances. Obviously a
11 relevant matter when we are talking about a
12 punitive damage claim.

13 **THE COURT:** Typically, though, net
14 worth is what is considered, not
15 necessarily -- unless it's impeachment,
16 i.e., you'll have a picture of a home that
17 he owns in the US Virgin Islands -- I think
18 that he has some connection with one of
19 those islands -- and I'm not trying to
20 suggest anything as far as anything
21 inappropriate -- but I can conceive of this
22 situation that if Mr. Epstein testifies that
23 his net worth is X comprised of A, B and C
24 in large part, but you find an asset that he
25 has not taken into account that's worth

1 twice as much of his claimed net worth --

2 **MR. SCAROLA:** I know he has a minimum
3 net worth of --

4 I don't mean to interrupt, Your Honor,
5 but Mr. Epstein refuses to provide any
6 evidence with regard to his net worth, so we
7 are obliged to offer circumstantial evidence
8 of his net worth, unless and until those
9 objections based on Fifth Amendment grounds
10 are overruled on the basis that they are
11 non-testimonial.

12 **THE COURT:** I think that's a subject
13 for another motion.

14 **MS. ROCKENBACH:** It is, Your Honor.

15 **MR. SCAROLA:** It is. But Your Honor
16 should not be deciding this issue on the
17 basis of the premise that we are going to
18 get evidence from Mr. Epstein as to what
19 Mr. Epstein's net worth is.

20 **THE COURT:** Agreed.

21 **MR. SCAROLA:** All he has told us is
22 he's willing to stipulate to a net worth in
23 excess of \$100 million. Well, it makes a
24 difference as to whether it's 100 million,
25 200 million or a thousand million, that is a

1 billion dollars, or \$2 billion.

2 So even if we're left with a Fifth
3 Amendment assertion, we are back to the same
4 issue that was raised by the defense, and
5 that is, there needs to be some evidence
6 independent of the Fifth Amendment assertion
7 that would allow the inference to be --

8 **THE COURT:** I'm going to cut you off.
9 I'm going to defer on number three.

10 Number four is the Amazon receipt for
11 the "SM 101: A Realistic Introduction,
12 Slave Craft: Roadmap for Erotic
13 Servitude-Principles, Skills and Tools" and
14 Training Miss Abernathy. A Workbook for
15 Erotic Slaves and their Owners."

16 **MR. SCAROLA:** I never read it.

17 Your Honor, if I might --

18 **MS. ROCKENBACH:** It has no relevance,
19 Your Honor. Prejudicial. Should not be
20 discussed, referenced, admitted. I think
21 it's also a receipt from Amazon for the
22 book, by the way. It's an order
23 confirmation. If my memory serves correct,
24 it's a receipt for the purchase of a book.
25 It has nothing to do with malicious

1 prosecution.

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

3 **MR. SCAROLA:** In fact, it does. I
4 might explain to Your Honor that many of
5 items that on this list that are being
6 challenged, a vast majority of them, were
7 part of an appendix to the motion for
8 summary judgment that was not defended
9 against by Mr. Epstein.

10 **THE COURT:** Let me ask you this. Was
11 this particular exhibit located prior to the
12 suit being filed by Mr. Epstein?

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

14 **MS. ROCKENBACH:** It's the receipt
15 located by whom?

16 **THE COURT:** By anybody. For the
17 purposes of this case.

18 **MR. SCAROLA:** These are items --

19 **THE COURT:** In other words, was it
20 discovered in a lawsuit that was filed prior
21 to Mr. Epstein filing this suit?

22 **MR. SCAROLA:** No, sir. It was
23 discovered when a search warrant was
24 executed by law enforcement shortly after
25 the criminal allegations were made against

1 Mr. Epstein before any of the civil lawsuits
2 were filed.

3 So law enforcement gets probable cause
4 to execute a search warrant on Mr. Epstein's
5 home. And one of the things that is
6 found -- or many of the things that are
7 described here, are found during the course
8 of the execution of that search warrant and
9 formed probable cause for the criminal
10 charges against Mr. Epstein.

11 Even more significantly, they formed
12 the basis for the civil lawsuits that were
13 filed on behalf of L.M., E.W. and Jane Doe.

14 That is, this is all evidence taken
15 into account in substantiating the validity
16 of the claims of these three particular
17 victims of Mr. Epstein.

18 And all of these things are delineated
19 in the motion for summary judgment that
20 Mr. Epstein does not defend against and
21 voluntarily dismisses his case on the eve of
22 the hearing.

23 Your Honor is well aware of
24 procedurally he would have been obliged well
25 in advance of the hearing to file his

1 opposition to the motion for summary
2 judgment. He doesn't do that.

3 Why is that significant in the context
4 of this case? Because, as we have heard
5 from the defense, they are going to
6 challenge whether there is a bona fide
7 termination of the claim against Mr. Edwards
8 in favor of Mr. Edwards. Was the abuse of
9 process claim terminated under such
10 circumstances as to indicate a bona fide
11 termination?

12 How do we make that decision? Well,
13 the only way to make that decision is to
14 talk about the motion for summary judgment,
15 what supported the motion for summary
16 judgment, and the fact that the motion for
17 summary judgment was not opposed, a
18 voluntary dismissal was taken, and the
19 statute of limitations permitted to expire
20 without ever refiling those claims.

21 So as long as bona fide termination
22 remains an issue, the motion for summary
23 judgment is clearly relevant and material.
24 And this is all part of the motion for
25 summary judgment.

1 Many of these things, in addition to
2 that, forms the basis for the explanation of
3 Mr. Edwards' conduct when he was a member of
4 RRA, and demonstrate that he wasn't abusing
5 process in any respect at all while he was
6 prosecuting these claims. He was pursuing
7 very relevant and material avenues of
8 discovery reasonably calculated to lead to
9 admissible evidence.

10 So that's my full response to this.

11 **THE COURT:** The objection is sustained
12 on two grounds: on relevancy and also 403
13 analysis.

14 I will entertain the introduction
15 outside the presence of the jury, if it
16 becomes necessary.

17 The other concern I have is that at
18 best it appears to sound like it may be
19 impeachment on a collateral matter.
20 Collateral to the summary judgment -- the
21 summary judgment motion that was made and
22 then not challenged. For those reasons, I'm
23 going to sustain the objection at this time.
24 Again, subject to context for being able to
25 readdress it, if necessary.

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1 **MR. SCAROLA:** Number four is sustain?

2 **THE COURT:** Yes, sir, for the reasons
3 stated in the record.

4 **MR. SCAROLA:** Understood.

5 **THE COURT:** The NPA, I have already
6 indicated that the inclination would be --
7 if properly predicated -- would be allowed.
8 The Jane Doe, one of two complaints -- I
9 don't see any -- what would be the grounds
10 for objecting to that?

11 **MS. ROCKENBACH:** I'm not sure what the
12 relevance is. I'm not the proponent of the
13 evidence, but I don't see what relevance
14 there would be of Jane Doe's complaint.

15 The relevance in this malicious
16 prosecution action might be the allegations
17 of this complaint, this action. But when we
18 start bringing in other complaints as
19 exhibits for a jury to read, I think that go
20 far afield from --

21 **THE COURT:** This is the same Jane Doe
22 or a different Jane Doe?

23 **MR. SCAROLA:** Same Jane Doe.

24 **THE COURT:** Overruled.

25 Next issue.

1 **MR. SCAROLA:** Excuse me, Your Honor.

2 There are two Jane Does. This is Jane Doe
3 102.

4 Jane Doe 102 was a Bob Josefsberg
5 client.

6 And just so I orient Your Honor with
7 regard to this matter. Under the terms of
8 the non-prosecution agreement, the federal
9 court appointed Bob Josefsberg as counsel on
10 behalf of all unrepresented victims to
11 protect the interest of unrepresented
12 victims turn the terms of the
13 non-prosecution agreement.

14 One of those multiple victims being
15 represented by Mr. Josefsberg was an
16 individual identified as Jane Doe 102. She
17 has since been publicly as [REDACTED] /
18 [REDACTED] [REDACTED].

19 And the specific allegations in this
20 complaint include the transport of Jane Doe
21 Number 2 on Mr. Epstein's private jets to
22 various homes owned by Mr. Epstein in
23 various locations inside and outside the
24 United States.

25 **THE COURT:** She's expect to be a

1 witness?

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

3 **THE COURT:** Live witness?

4 **MR. SCAROLA:** Live.

5 **THE COURT:** At this point I'm going to
6 find that, if, in fact, she is a witness,
7 that it would be cumulative, and hence I am
8 going to sustain the objection on those
9 grounds.

10 **MR. SCAROLA:** May I just finish my
11 argument as to why this complaint was of
12 significance? Because she does -- she does
13 allege in the complaint that she was
14 molested onboard the airplane, and that she
15 was prostituted out to third parties onboard
16 the airplane, which provided the basis for
17 Mr. Edwards seeking airplane logs and the
18 testimony of pilots and the testimony of
19 others identified in the flight logs as
20 being present on the plane.

21 **THE COURT:** That's fine. I don't have
22 a problem with Mr. Edwards testifying. If
23 it becomes an issue in terms of credibility
24 or whatever it might be, then I will take
25 another look on it. But on the basis of the

1 arguments that I have heard, the objection
2 is sustained for the reasons that I
3 provided.

4 **MR. SCAROLA:** Understood. Thank you,
5 sir.

6 **MS. ROCKENBACH:** Your Honor, before we
7 leave, based on Your Honor's ruling, I would
8 make an ore tenus motion for leave to depose
9 [REDACTED], because now it has become
10 clear that she is going to be testifying,
11 based on Mr. Scarola's statement and Your
12 Honor's ruling.

13 **THE COURT:** Wasn't she scheduled to
14 come to court from Australia? Wasn't that
15 the lady?

16 **MR. SCAROLA:** That's where she's
17 living. She was scheduled to come to court.
18 She was available to be deposed previously.
19 They chose not to take her deposition. She
20 has been listed as a witness for years in
21 this matter.

22 **THE COURT:** I have to do a written
23 motion, but I want to be consistent with
24 what I said recently, and that is that it's
25 not -- the continuance is not -- and I

1 emphasize, not designed to be a wholesale
2 reopening of discover, that the Court would
3 take that up on an issue-by-issue basis.

4 But, without pre-deciding anything,
5 unless it can be demonstrated to the Court
6 that there was unavailability, that there
7 was a late filing, that there was some type
8 of inability of a witness to testify,
9 something along those lines.

10 These witnesses have been listed for a
11 lengthy period of time. Again, this was not
12 the purpose of the motion that was filed and
13 it was not the import of the order of the
14 Court.

15 Let's talk about number seven.

16 **MS. ROCKENBACH:** Messages taken from
17 message pads found at Mr. Epstein's home.

18 **THE COURT:** What do the messages say?

19 **MR. SCAROLA:** They relate to arranging
20 sexual massages with minors. I can't tell
21 you from memory -- but Mr. Edwards may be
22 able to -- whether there are specific
23 references to our three clients.

24 **THE COURT:** Not to be overly technical
25 or hypertechnical here, is Mr. Edwards

1 serving as co-counsel?

2 **MR. SCAROLA:** Yes, Your Honor. I think
3 I've told Your Honor before, we don't
4 anticipate him taking an active role in the
5 trial, but he remains as co-counsel of
6 record in this case.

7 **THE COURT:** Fair enough.

8 Mr. Edwards, would you like to comment
9 on that?

10 **MR. EDWARDS:** Sure, Your Honor. The
11 message pads include the names of many of
12 the underaged females that visited and set
13 up appointments at Mr. Epstein's home,
14 including L.M., E.W. and Jane Doe.

15 **THE COURT:** Have they been
16 authenticated by Mr. Epstein? Or did he
17 take the Fifth on that?

18 **MR. EDWARDS:** He has taken the Fifth on
19 questions related to that. They have been
20 authenticated in other depositions by
21 Detective Vicari, although those were taken
22 in other cases. But he's an available
23 witness who could testify as to the chain of
24 custody: Where he found the message --
25 where he found the messages and how he

1 gathered them during the search warrant.

2 **THE COURT:** The relevancy, Mr. Scarola?

3 **MR. SCAROLA:** They clearly relate to
4 the validity of the claims on behalf of
5 these three victims of Mr. Epstein. They
6 corroborate that these young women were
7 there at his home on many occasions, and
8 along with a large number of other underaged
9 females who were being routinely molested by
10 Mr. Epstein.

11 **MS. ROCKENBACH:** Your Honor, may I
12 relay? This is inflammatory. These message
13 pads may be relevant had Mr. Edwards not
14 settled the three lawsuits in which he
15 represented those three women. But they are
16 not relevant in the malicious prosecution
17 case whether my client had probable cause to
18 file this action or not, or malice.

19 We are definitely getting far afield in
20 terms of the exhibits. And it looks like --
21 and I understand why Mr. Edwards would want
22 to try exhibits that were relevant to his
23 clients' action because the exhibits that
24 should be relevant in the malicious
25 prosecution case are the facts and

1 circumstance, or the lack of facts and
2 circumstances on which my client relied in
3 filing this lawsuit -- the civil action --
4 the civil proceeding.

5 Message pads regarding these
6 appointments are absolutely 90.403
7 prejudicial and not -- which prejudicial
8 affect clearly outweigh any remote probative
9 value in this action.

10 **MR. SCAROLA:** It seems to me that we
11 are going, unfortunately, around the same
12 mulberry bush. The validity of the claims
13 is an issue.

14 In addition to that, the viability of
15 the claims against Mr. Epstein from a
16 criminal perspective is part of why he was
17 so concerned about this non-prosecution
18 agreement being set aside.

19 He knew that there was a mountain of
20 evidence that would prove that he was a
21 serial child molester, that there were
22 dozens and dozens of victims of his
23 molestations, which were occurring multiple
24 times a day, day after day after day.

25 And the only way he could foresee at

1 this point in escaping the criminal exposure
2 that was clearly going to result in
3 convictions, because of this mountain of
4 evidence available, was to scare off the one
5 person who was challenging that
6 non-prosecution agreement through the Crime
7 Victims' Rights Act case.

8 **THE COURT:** I'm going to defer on
9 ruling on this. But it is not to be
10 mentioned during opening statement. And it
11 is going to be determined by the Court in
12 the context in which I believe it would be
13 necessary.

14 And I'm concerned about first -- as I
15 mentioned earlier on in another exhibits --
16 that this is collateral. That it would
17 constitute impeachment on a collateral
18 matter.

19 Again, I don't want to get back into
20 serial child molestation. I believe words
21 to that effect were just utilized, so that's
22 the reason for the ruling.

23 I think that right now, based upon what
24 I'm looking at, which is not the actual
25 messages, but just the recitation of an

1 exhibit would be that there -- that any
2 probative value would be materially
3 outweighed by the prejudice.

4 **MS. ROCKENBACH:** Thank you, Your Honor.
5 We are working off of Mr. Edwards' exhibit
6 list. And the next one is eight, documents
7 related to Mr. Epstein produced by Alfredo
8 Rodriguez.

9 **THE COURT:** Alfredo Rodriguez was the
10 houseperson, if I'm understanding?

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

12 **THE COURT:** I don't know what that
13 means. What specifically are we talking
14 about?

15 **MR. SCAROLA:** We're talking about a
16 book that contain a list of Jeffrey
17 Epstein's victims, their names and telephone
18 numbers, as well as a number of other
19 contacts that Jeffrey Epstein have, who
20 through other evidence, were established to
21 be regular guests in his home.

22 These provided corroboration of the
23 testimony of L.M., E.W. and Jane Doe. They
24 provided evidence of the extent of
25 Mr. Epstein's molestation of children, which

1 obviously supports the magnitude of the
2 wrong in which he was engaged, which goes
3 directly to the punitive value of the claims
4 brought by L.M., E.W. and Jane Doe, that is,
5 a jury faced with the task of making a
6 determination as to the appropriate amount
7 of punitive damages is instructed that they
8 shall take into consideration the magnitude
9 of the wrong, and that includes the total
10 number of victims involved in the offender's
11 wrongdoing.

12 **THE COURT:** I presume that by the time
13 the case was settled that I or a predecessor
14 judge in that division had found a valid
15 claim for punitive damages in terms of those
16 case that we are dealing with here?

17 **MR. SCAROLA:** Yes. There were multiple
18 punitive damages claims pending.

19 **THE COURT:** I would have expected so.
20 I just didn't know the timing.

21 **MR. SCAROLA:** Yes.

22 **MS. ROCKENBACH:** Your Honor's question
23 got us directly to the point. This is
24 relevant evidence for punitive damages in
25 Mr. Edwards' clients' cases, not in this

1 case.

2 **THE COURT:** My concerns are, again,
3 that we are going too far afield. And
4 again, my best efforts to try to keep this
5 as a level playing field when it comes to
6 focusing on the claims that are made in this
7 particular case, that being the malicious
8 prosecution case.

9 And while I know and I have already
10 indicated, and I believe Epstein's counsel
11 has conceded that it cannot be sanitized,
12 and will not be sanitized, because it goes
13 to many of the issues that are involved
14 here, and by way of Mr. Edwards'
15 recitations, through Mr. Scarola, the
16 motives that Mr. Epstein may have had to
17 file the action at bar.

18 But at the same time I am going to rule
19 in the same way as I did as to number seven,
20 and, that is, that I find that under 403
21 that the probative value -- any probative
22 value is materially outweighed by the
23 prejudice involved.

24 **MR. SCAROLA:** May I ask a rhetorical
25 question, Your Honor?

1 **THE COURT:** Sure.

2 **MR. SCAROLA:** When Mr. Epstein alleges
3 that these cases were ginned up, when he
4 alleges that asking in the complaint for
5 \$50 million was totally out of line and
6 supportive of his conclusions that this was
7 a fabricated claim constructed solely for
8 the purposes of supporting -- knowingly
9 supporting a Ponzi scheme -- when he alleges
10 that these cases really had no significant
11 value, how can we not talk about what the
12 punitive damage value of the cases were and
13 why they had enormous punitive damage value
14 when they are claims relating to a vast
15 number of molestations by a billionaire?

16 **THE COURT:** Because we are dealing with
17 the three cases that Mr. Edwards represented
18 these three individuals. And to allow
19 records, information about anybody else at
20 this juncture would, in my view, be
21 collateral to the allegations made by
22 Epstein in his claim.

23 And there's no contention here that
24 Mr. Edwards, for whatever reason, went on
25 some type of organized witch hunt so as to

1 persecute or threaten Mr. Epstein with proof
2 of other cases, proof of other alleged
3 molestations, documents that are at issue or
4 anything of that nature.

5 **MR. SCAROLA:** That's exactly what was
6 alleged, sir. It was alleged that Bradley
7 Edwards was pursuing discovery with regard
8 to molestations of other children that took
9 place on an airline when none of Brad
10 Edwards' clients were ever molested on the
11 airplane. That he had no reasonable basis
12 for doing that.

13 **THE COURT:** Now, it seems to me we're
14 engaging in a negative, proving up a
15 negative.

16 **MR. SCAROLA:** You lost me.

17 **THE COURT:** You understand what I'm
18 trying to say?

19 **MR. SCAROLA:** No.

20 **THE COURT:** None of Mr. Edwards'
21 clients were molested on an airplane, then
22 it seems to me to be conceding my point, and
23 that is, then there's no reason for these
24 other issues to be introduced, because
25 there's nobody that Mr. Edwards represented

1 that was molested on an airplane.

2 **MR. SCAROLA:** That's exactly my point,
3 sir. That's the defense argument.

4 **THE COURT:** Show me where that's --

5 **MR. SCAROLA:** That's the defense
6 argument that this was irrelevant discovery.

7 **THE COURT:** Show me where that's in the
8 complaint about the other alleged victims.

9 **MR. SCAROLA:** We'll have that for you
10 in just a moment, Your Honor.

11 **THE COURT:** Let me take a look at that
12 and see how it may or may not be conjecture.

13 **MR. SCAROLA:** While we are finding
14 that -- we will have that for you in just a
15 moment -- your Honor may recall that I
16 referenced earlier -- and I have,
17 unfortunately, misplaced the copy of the
18 federal statute. I should have it -- I
19 should have it in just a moment.

20 **THE COURT:** I mean, I'm looking at
21 paragraphs 17 and 18, for example, where
22 Mr. Epstein alleges, while relative to this
23 action, Epstein is currently named as
24 defendant in three civil actions alleging
25 sexual assault and battery that were handled

1 by RRA and his attorneys, including Edwards,
2 prior to its implosion -- presuming he means
3 RRA's and not Mr. Edwards' implosion -- one
4 of which was filed in federal court -- and
5 the two in state court that I have already
6 identified. The civil actions were filed in
7 August and September of 2008.

8 Paragraph 18 then says, quote, what is
9 clear is a fraudulent and improper
10 investment of a Ponzi scheme was, in fact,
11 conducted and operated by RRA and certain of
12 the named defendants, which scheme directly
13 impacted Epstein as a named defendant in
14 these civil actions -- referencing the three
15 at issue.

16 **MS. ROCKENBACH:** Correct.

17 **THE COURT:** Where is --

18 **MR. SCAROLA:** Paragraphs 35 and 36.

19 **THE COURT:** Let's take a look at those.

20 Paragraph 35 states, quote, For instance,
21 the litigation team relentlessly and
22 knowingly pursued flight data and passenger
23 manifests regarding flights Epstein took
24 with these famous individuals knowing full
25 well that no underaged women were on board

1 and no illicit activities took place.

2 Rothstein and the litigation team also
3 inappropriately attempted to take the
4 depositions of these celebrities in a
5 calculated effort to bolster the marketing
6 scam that was taking place, end quote.

7 Next paragraph?

8 **MR. SCAROLA:** Next paragraph.

9 **THE COURT:** Quote, one of the
10 plaintiffs' counsel -- strike that.

11 One of plaintiff's counsel Edwards,
12 deposed three of Epstein's pilots and sought
13 the deposition of a fourth pilot currently
14 serving in Iraq. The pilots were deposed by
15 Edwards for over 12 hours, and Edwards never
16 asked one question relating to or about
17 L.M., E.W. and Jane Doe, RRA's clients, as
18 it related to transportation on flights of
19 RRA clients on any of Epstein's planes. But
20 Edwards asked many inflammatory, leading and
21 irrelevant questions about the pilots'
22 thoughts and beliefs, which will never be
23 admissible at trial, which could only have
24 been asked for the purpose of pumping the
25 cases, and thus by using the deposition to

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1 sell the cases or a part of them to third
2 parties. End quote.

3 Anything else?

4 **MR. SCAROLA:** Those are two obvious
5 references in the complaint to conduct on
6 the part of Brad Edwards alleged to have
7 been improper and forming part of the basis
8 for abuse of process claims.

9 **THE COURT:** The Court's ruling remains
10 the same.

11 **MR. SCAROLA:** I never like to argue
12 after the Court has already ruled, but there
13 is one additional point that I want to make.

14 **THE COURT:** Sure.

15 **MR. SCAROLA:** Your Honor, I have cited
16 in -- we have cited in submissions to the
17 Court, specifically the motion in limine
18 addressing the scope of admissible evidence
19 that we have filed. We have cited the
20 provisions of Florida statute 90.404,
21 subsection two, commonly known as the
22 Williams Rule statute, which talks about
23 evidence of other crimes.

24 We have also cited the federal rule of
25 evidence, Rule 415. And that rule expressly

1 permits the introduction in evidence of the
2 molestation of other children in any federal
3 action, criminal or civil, involving the
4 molestation of a child.

5 Congress explained -- and quote, That
6 in the submission to the Court -- the reform
7 effected by these rules is critical to the
8 protection of the public from rapists and
9 child molesters. It's justified by the
10 distinctive characteristics of the cases to
11 which it applies.

12 "In child molestation cases, a history
13 of similar acts tends to be exceptionally
14 probative, because it shows an unusual
15 disposition of a defendant, a sexual or
16 pseudosexual interest in children that
17 simply does not exist in ordinary people.

18 "Moreover, such cases require reliance
19 on child victims, whose credibility can
20 readily be intact in the absence of
21 substantial corroboration.

22 "In such cases, there is a compelling
23 public interest in admitting all significant
24 evidence that will shed some light on the
25 credibility of the change -- excuse me -- of

1 the charge and any denial by the defense."

2 So --

3 **THE COURT:** And Mr. Scarola, if we were
4 trying a sexual molestation case, there may
5 be a stronger argument. But the very point
6 that I'm making is that we're not trying a
7 sexual molestation case, per. Now, there
8 may be elements and issues that may arise,
9 depending upon the nature of Mr. Epstein's
10 position relative to these matters.

11 However, it does not change the Court's
12 view that these messages taken from a
13 message pad at Epstein's home relate to
14 others and that the documents related to
15 Epstein produced by his houseman,
16 Mr. Rodriguez, that relate to others,
17 remains irrelevant. And any probative
18 value, if found to be relevant, would be
19 materially outweighed by the prejudice.

20 The Court's decision remains the same.
21 I think it's bolstered by the fact that we
22 are not trying the child molestation case.
23 And the significance of the collateral cases
24 is not, in my respectful view, necessarily a
25 touchstone of this particular case and this

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1 particular analysis.

2 We are going to have to call it a day.

3 I thank you very much, again, for your
4 arguments and your input, written and oral.
5 Thank you, again.

6 Again, thanks to our court reporter and
7 our courtroom personnel also for their hard
8 work and courtesies.

9 Have a good rest of the week. We will
10 see you back, if not before, on
11 December 5th.

12 **MR. LINK:** Thank you for your time.

13 **THE COURT:** We will take up the
14 remaining issues of evidence first, and then
15 we will go back to the schedule, which I
16 very much appreciate you all providing. We
17 will adhere to that schedule as we continue
18 on with the motions.

19 We will be in recess.
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