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IN THE CIRCUIT COURT OF THE
 FIFTEENTH JUDICIAL CIRCUIT, IN
 AND FOR PALM BEACH COUNTY, FLORIDA
 Case No. 502009CA040800XXXMB

JEFFREY EPSTEIN,
 Plaintiff/Counter-Defendant,
 vs.
 SCOTT ROTHSTEIN, individually;
 BRADLEY EDWARDS, individually,
 Defendants/Counter-Plaintiff.

VIDEOTAPED DEPOSITION
 OF
 WILLIAM BERGER

Taken on Behalf of Defendant/Counter-Plaintiff

Friday, February 23rd, 2018
 9:27 [REDACTED] - 1:32 [REDACTED].
 2255 Glades Road, Suite 218-A
 Boca Raton, Florida 33431

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2

1 Examination of the witness taken before
 2 Sonja D. Hall
 3 Palm Beach Reporting Service, Inc.
 4 1665 Palm Beach Lakes Boulevard, Suite 1001
 5 West Palm Beach, FL 33401
 6 (561) 471-2995

7 APPEARANCES:
 8 For Plaintiff:
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 12 By SCOTT J. LINK, ESQUIRE

13 For Plaintiff:
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 16 New York, NY 10022
 17 By DARREN K. INDYKE, ESQUIRE

18 For Defendant/Counter-Plaintiff:
 19 SEARCY, DENNEY, SCAROLA, BARNHART &
 20 SHIPLEY, [REDACTED].
 21 2139 Palm Beach Lakes Boulevard
 22 West Palm Beach, FL 33409
 23 By JACK SCAROLA, ESQUIRE

24 ALSO PRESENT
 25 Above & Beyond Reprographics
 2161 Palm Beach Lakes Boulevard
 West Palm Beach, Florida 33401
 By Manuel Santiago, Videographer

4

1 THE VIDEOGRAPHER: This is the 23rd day
 2 of February 2018. The time is approximately
 3 9:27 [REDACTED].

4 This is the videotaped deposition of
 5 William Berger in the matter of Jeffrey
 6 Epstein versus Scott Rothstein and Bradley
 7 Edwards.

8 This deposition is being held 2255
 9 Glades Road, Suite 218-A, Boca Raton,
 10 Florida 23431.

11 My name is Manuel Santiago. I am the
 12 videographer representing Above & Beyond
 13 Reprographics.

14 Will the attorneys please announce
 15 their appearances for the record?

16 MR. LINK: Sure. Scott Link on behalf
 17 of plaintiff, Jeffrey Epstein.

18 MR. INDYKE: Darren Indyke on behalf of
 19 plaintiff, Jeffrey Epstein.

20 MR. SCAROLA: My name is Jack Scarola.
 21 I am counsel on behalf of Brad Edwards.
 22 Brad Edwards is plaintiff in the
 23 counterclaim in which this case -- excuse me
 24 -- in which this deposition is being taken.

25

5

1 THEREUPON,
2 WILLIAM BERGER,
3 being a witness in the notice heretofore
4 filed, and being first duly sworn in the above cause,
5 testified on his oath as follows:
6 THE WITNESS: I do.
7 DIRECT EXAMINATION
8 BY MR. SCAROLA:
9 Q Could you please introduce yourself to the
10 ladies and gentlemen of the jury, before whom this
11 deposition is likely to be shown?
12 A My name is William Joseph Berger.
13 Q And where is the deposition being taken
14 today, Mr. Berger?
15 A It's being taken in the Law Office of Weiss,
16 Handler & Cornwell, the firm that I work for.
17 Q What is your capacity with the firm?
18 A I am an attorney with the firm.
19 Q How long have you been employed by Weiss,
20 Handler & Cornwell.
21 A Since approximately December of 2009.
22 Q You understand that this deposition is
23 being taken in a case in which Bradley Edwards has
24 brought suit against Jeffrey Epstein for malicious
25 prosecution, correct?

6

1 A Yes.
2 Q And can you tell us, please, understanding
3 that the case is set to be tried the second two weeks
4 in March, where you are going to be the second two
5 weeks of March?
6 A I will have surgery out of town March 5, and
7 I will be rehabilitating or recovering probably for the
8 rest of the month.
9 Q All right, sir, thank you. We wish you
10 best of luck with your surgery. Sorry that you are
11 not going to be with us at trial in person. But
12 that's the reason why we are taking this videotaped
13 deposition today.
14 A Thank you.
15 Q I want, before we begin dealing with the
16 issues involved in this case, to talk to you a little
17 bit about your professional history. So let's start
18 with higher education.
19 Where did you go to school and what did
20 you study?
21 A I went to college for a year at Syracuse,
22 then I transferred to the University of Florida. I
23 graduated from the University of Florida with a
24 bachelor's degree. I had a degree in philosophy, and
25 that was in 1971. And then I stayed at the University

7

1 of Florida graduate school and got a master's degree in
2 philosophy. I then applied to the University of Miami
3 law school. And I went to law school from 1972 to
4 1975, when I graduated the University of Miami law
5 school.
6 Q Tell us how you came to select philosophy
7 as a major?
8 A How much time do you have?
9 Q Well, I have a lot of time, but I expect
10 that the jury would like you to be relatively brief.
11 A I have also had a very longstanding interest
12 in the ideas, concepts, fundamental principles, and I
13 was attracted to philosophy.
14 Q All right, sir. Were your plans when you
15 chose that major to eventually go to law school?
16 A No.
17 Q What were your plans?
18 A I was going to open up a philosophy shop and
19 tell people if they existed or not.
20 Q Sounds like an endeavor that was not likely
21 to enable you to support a family?
22 A Actually, it was teaching. I was going to go
23 into teaching, and then I decided to go into law
24 school.
25 Actually, law seemed to me to be -- I have

8

1 always thought of law as the combination of
2 philosophy in action. That's what, to me, law is,
3 the application of principles to real life
4 situations.
5 Q Where were you born and raised?
6 A I was born in Philadelphia, Pennsylvania.
7 And at the age of one year, my family moved to Miami
8 Beach, and I grew up on Miami Beach.
9 Q Do you have a family of your own now?
10 A Yes. Linda and I have been married for 47
11 years and we have three daughters.
12 Q Let's pick up with your graduation from law
13 school in 1975, and tell us what you did after
14 graduating.
15 A From 1975 to 1997 I was an attorney in Miami,
16 and I was with several law firms during those 22 years.
17 I was with the Greenberg Traurig law firm; the Fine
18 Jacobson law firm; a firm called Hughes Hubbard & Reed,
19 which is a New York firm that had a Miami office. And
20 I had my own practice in between. So that takes me to
21 1997.
22 Then in 1997 Linda and I decided that we
23 were going to move to Boca Raton, and we did. I
24 joined this firm in 1997, the Weiss Handler firm. I
25 was here for a year, and then I started my own

9

1 practice, just a solo practice until 2002.

2 And in 2002, I ran for circuit court judge

3 here in Palm Beach County and I was elected. I

4 served as a circuit judge in Palm Beach County from

5 January of 2003 until June of 2008.

6 Q Let's talk a little bit about the nature of

7 your practice before you were honored with a position

8 on the bench. Tell us, if you would, please, about

9 what kind of legal work you did in those decades

10 before you became a circuit court judge?

11 A I handled lawsuits of people suing other

12 people, companies suing companies. General-type work,

13 state and federal.

14 In the '90s I started to focus on

15 employment discrimination law where I represented

16 the employees who had been fired or disciplined.

17 Those were cases against their employers. And so if

18 I had any kind of concentration, it was in that

19 area. Probably a third of my practice was in that

20 area until I was elected to the bench.

21 Q During that period of time before taking

22 the bench, did you focus your practice exclusively on

23 representing either plaintiffs or defendants?

24 You told us that your employment law

25 practice was focused on representing plaintiffs.

10

1 What about prior to that?

2 A Well, I did -- I did -- even during that

3 time, I did represent some employers, so I did

4 represent both sides.

5 In other types of cases, there was no

6 exclusive representation of plaintiffs or defendants

7 in what we would call civil matters, commercial

8 disputes and those types of things.

9 Q What motivated you to seek a position on

10 the bench?

11 A Maybe the same thing that motivated me to go

12 into philosophy. It was something where I could

13 actually apply principles, legal principles to

14 real-life situations and deal with people's issues and

15 really do something for society. And it was something

16 that was very rewarding when I was on the bench.

17 Q What were the circumstances under which you

18 left?

19 A Well, unfortunately in 2007/2008, we were

20 hit -- my family was hit with the recession, so we

21 had -- it was a serious financial situation for us, so

22 I decided I needed to go back into private practice.

23 Q You told us about your 47-year marriage.

24 Do you have children?

25 A Yes, three daughters.

11

1 Q Tell us a little about them, if you would,

2 please.

3 A My daughter Marla is 43 today. It's her

4 birthday. She's a mental health counselor.

5 Unfortunately, her -- in the sense that she specializes

6 in grieving, she administers mental health counseling

7 to -- particularly to children -- she works for a

8 charity called Tomorrow's Rainbow in Broward County.

9 She has her hands full right now with the shooting.

10 My daughter Lauren is 41, and she's a

11 social director -- rather, an activities director

12 for a large temple here in Boca Raton.

13 My youngest daughter is Brooke, who is 29

14 years old. Brooke is looking to find herself, so

15 she's back at home now, and we are going to see

16 where she goes next.

17 Q I have a few of those myself.

18 Tell us, if you would, please, how you

19 went about addressing the financial issues that

20 arose in '07 and '08 that compelled you to leave the

21 bench?

22 A I decided I needed to go back to private

23 practice. I took a substantial cut in pay to become a

24 judge, and we realized that going into it. But it was

25 just something that needed to be addressed as a result

12

1 of the recession, so I decided to look to go back into

2 practice. And I was -- I interviewed with a couple of

3 large firms.

4 Q Tell us, before we leave focus on your

5 judicial career, what you did during those five to

6 six years?

7 A Well, in Palm Beach County, the circuit

8 court, which is the higher-level trial court, is

9 divided into five divisions: civil, criminal, family,

10 probate and juvenile. In the five to six years that I

11 was a judge, I served in the civil division for one

12 year, then I served in the family division involving

13 divorces, custody fights for two and a half years. And

14 that was in the branch court in Delray Beach. And I

15 was the administrative judge for the Delray Beach

16 courthouse.

17 And then the last approximately two years

18 that I was on the bench, I served in the criminal

19 division, so I presided over felonies/capital cases

20 for two years.

21 Q I know from the review of your professional

22 résumé that you currently, in addition to doing trial

23 work, also do some appellate work; is that correct?

24 A Yes.

25 Q Did you have any appellate responsibilities

1 while you were a judge?

2 A Yes. Judges that are circuit court judges
3 have appellate responsibility for cases from the county
4 court being appealed to the circuit court, and I worked
5 on those. And then I was also invited by the Fourth
6 District Court of Appeal, which is our appellate court
7 for Palm Beach County, Broward County and the Treasure
8 Coast.

9 I was invited one summer to sit on -- to
10 sit on that court in place of a judge who was on
11 vacation, Judge Barry Stone. So I served on the
12 Fourth District and served with a panel of judges
13 and heard quite a number of cases and wrote several
14 decisions for the Fourth District.

15 Q The jury may not be familiar with the
16 procedure, but when the appellate court reviews
17 decisions that are rendered and jury trial results at
18 the trial court level, how many judges are involved
19 in that review process?

20 A Three.

21 Q And you then were one of three panel
22 members in the review of multiple cases that were
23 heard before the Fourth District Court of Appeal?

24 A Yes.

25 Q Did you ever have the responsibility of

1 circuit court judges.

2 Q In going through your career, we had
3 reached the point where in 2008 you faced the
4 economic reality of having to leave the bench. Where
5 did you then go?

6 A I was hired by the Rothstein, Rosenfeldt &
7 Adler firm.

8 Q How did that come about?

9 A As I said, I was interviewing with two firms.
10 There were two large firms that had offices in Palm
11 Beach County -- large offices in Palm Beach County.

12 When we moved up here in 1997, my daughter
13 Brooke got to know Stuart Rosenfeldt's daughter, and
14 we became socially acquainted with Stuart Rosenfeldt
15 and his wife. So I knew him from 1997 until -- we
16 are at 2008. I knew him that entire time.

17 In fact, when I went on the bench in 2003,
18 I referred to Stuart my employment cases that I had.
19 I had a great deal of respect for Stuart.

20 Stuart was a very prominent attorney in
21 the employment law area. He wrote for the Florida
22 Bar the test that lawyers take to become board
23 certified in labor law. He had an excellent
24 reputation in that area.

25 And Stuart, I would see him every once in

1 writing opinions on behalf of the court, even though
2 you were an associate judge and not a regular member
3 of the Court?

4 A Yes, I wrote several divisions that were
5 published and -- for the courts -- for the court of
6 appeal.

7 Q Did you also, during the course of those
8 years when you were serving as a circuit court judge,
9 receive the honor of having been selected by the
10 chief justice of the Florida Supreme Court to fulfill
11 any responsibilities on behalf of the Supreme Court
12 of Florida?

13 A Yes. The position of chief justice rotates
14 among the justices in the court. And at the time the
15 chief justice of the Florida Supreme Court was Fred
16 Lewis. And Justice Lewis appointed me to a statewide
17 panel consisting of laypersons, judges at the trial
18 level, and appellate judges and retired Supreme Court
19 justices on a committee to study how the public could
20 be better informed in voting for trial judges.

21 In Florida, county and circuit court are
22 elected. Appellate judges are appointed by the
23 governor. And the purpose of the panel was to deal
24 with how the public could be better informed in
25 decisions of -- towards voting for county and

1 a while, and he would tell me about this firm that
2 he was now with, Rothstein, Rosenfeldt & Adler, and
3 it was upbeat. He portrayed it as a very dynamic
4 firm.

5 So during the time I was looking to go
6 back into private practice talking to other firms, I
7 read in the paper that Rothstein, Rosenfeldt & Adler
8 had just hired the former mayor of Boca Raton Steve
9 Abrams to open up a Boca Raton office.

10 Now, I knew Steve Abrams. He was my
11 mayor. He was our mayor here in Boca Raton during
12 9/11, and I had a great deal of respect for him.

13 We had an anthrax attack here in Boca at
14 the National Enquirer Building. And Mayor Abrams
15 was like Mayor Giuliani for Boca Raton. He was
16 very -- showed great leadership skills.

17 So when I saw -- and then he was not the
18 mayor anymore, of course, in 2009. But when I saw
19 that the firm was hiring -- had hired Steve Abrams
20 to open up an office here, which would be a
21 brand-new office, not a branch office of a big firm
22 that had -- that already had a large number of
23 people in a branch office, it just seemed like an
24 opportunity I needed to explore.

25 So I called Stuart. And I said, Stuart, I

1 would like to talk to your firm about -- I told him
2 I was thinking of leaving the bench. And I asked if
3 I could be interviewed by the firm to work with
4 Steve Abrams in opening up the office here.

5 Q Did you then interview with the firm of
6 Rothstein, Rosenfeldt & Adler?

7 A Yes. Stuart and I talked, and then he
8 introduced me to Scott Rothstein, and that was the
9 interview I had.

10 Rothstein and I talked for about a half
11 hour in his office, and he made me an offer and I
12 accepted it.

13 Q Which office was it at which you were
14 interviewed by Mr. Rothstein?

15 A The firm didn't have a Boca location. It had
16 a Fort Lauderdale location on East Las Olas Boulevard,
17 so it was in that suit of offices there, in his office.

18 Q Tell us about that suit of offices.

19 A Well, at the time the -- I call it RRA for
20 Rothstein, Rosenfeldt & Adler -- RRA had -- if [REDACTED] not
21 mistaken, it had one and a half floors of that
22 high-rise office building on East Las Olas. And
23 Rothstein's office was on the floor -- the main floor
24 where they had the entire floor.

25 Q Describe the offices.

1 A Well, the offices were a number -- you had a
2 waiting room, you had a number of attorneys' offices,
3 and sort of common areas. Some of the offices were
4 bigger, some were corner offices, depending on the
5 attorney's position with the firm, and Rothstein had
6 his own office, which, of course, was larger than
7 others.

8 Q Describe Mr. Rothstein's office for the
9 benefit of the jury, if you would please.

10 A Well, it was a big office. It got bigger
11 later. It was renovated in 2009 after I was hired. At
12 the time, it was -- it was not an overly large office,
13 but it was clearly the office of the attorney that was
14 -- the named partner in the firm -- the first named
15 partner in the firm.

16 Q How about once the office got renovated?
17 Did you have occasion to ever be in Mr. Rothstein's
18 office after the renovations?

19 A Yeah. It was either maybe triple the size
20 than it had been before, lavishly decorated.

21 Q How large was the firm at the time you
22 joined it? How many lawyers, approximately?

23 A It had about 60 or 70 lawyers at the time.

24 Q And total number of employees, could you
25 estimate that for us?

1 A Probably maybe double the total, if you
2 counted the lawyers. So it probably had 120 to 140
3 employees.

4 Q What happened to the size of the firm
5 during the period of time that you were associated
6 with the firm?

7 A The firm did grow. It also -- I mean, it
8 grew in Fort Lauderdale. We also hired -- we
9 eventually did open up a Boca Raton office where Mayor
10 Abrams and I practiced. We had one attorney along with
11 us that was full-time there and another attorney that
12 was part-time.

13 And then the firm also acquired an office
14 in Venezuela and maybe in Tallahassee. [REDACTED] not sure
15 about that. We also had an office in Washington,
16 [REDACTED]. that wasn't staffed -- fully staffed. There
17 might have been one other office possibly in New
18 York. I don't recall.

19 Q You told us about knowing Mr. Rosenfeldt
20 and knowing Mayor Abrams. Were there any other
21 lawyers working in that office who you either knew or
22 knew of?

23 A Yes. And that's one of the reasons that I
24 chose that firm. There were several people. I learned
25 that -- I think from my discussion with Scott Rothstein

1 when he interviewed me -- Judge Barry Stone, the same
2 appellate judge that I had taken his place when I sat
3 on the Fourth District -- that he had been hired by the
4 firm, and he had either already started or he was going
5 to start.

6 Judge Stone has a tremendous reputation.
7 I think he was the longest sitting judge on the
8 Fourth District.

9 In cases where I was -- as a circuit court
10 judge where I was reversed by the Fourth District
11 Court of Appeal he dissented from those reversals
12 several times.

13 Q So he had a special place in your heart?

14 A Right. Right. So I had a great deal of
15 respect for Judge Stone.

16 Another attorney, who is Gary Farmer Jr.,
17 Gary Farmer Jr. is the son of Gary Farmer Sr. And
18 Gary Farmer Sr. was also a judge on the Fourth
19 District Court of Appeal. And I knew his son was an
20 active, prominent personal injury attorney and class
21 action attorney, consumer attorney. He had just
22 settled a gigantic, hundreds-of-millions-of-dollars
23 whistleblower case against the pharmaceutical
24 industry. Well, that was very impressive. So Gary
25 either had joined the firm or was going to join the

1 firm. I knew that.

2 In addition to Mayor Abrams and -- there
3 was also an attorney named Steve Lippman, who I did
4 not know. But I got to know him. I heard of him.
5 He had quite a number of financial institutions as
6 clients. So when I joined the firm, the firm was
7 representing Citicorp, Wells Fargo, JCPenney, Ed
8 Morse Automotive dealerships. It was a cruise
9 line -- I forget the name of it, but we represented
10 a cruise line.

11 Robert Buschel, who was an attorney who
12 was at that firm. Buschel represented police
13 unions. So we had as clients the unions that
14 represented police officers. And I think those are
15 the attorneys that I knew going into the firm.

16 Q Do you remember the approximate month that
17 you actually joined RRA?

18 A June of 2009. [REDACTED] sorry. June of 2008.

19 Q You remained with the firm, then, for how
20 long?

21 A Until probably around November 8th to 10th,
22 something like that, 2009. So June 2008 to November of
23 2009.

24 Q Approximately 18 months -- about year and a
25 half?

1 A Yeah.

2 Q All right.

3 At that time you joined the firm and
4 through the end of October of 2009, how would you
5 describe the perception of the firm, the firm's
6 reputation in the South Florida legal community?
7 A I think it was in very high regard by the
8 legal community. When I joined the firm, I looked up
9 on the Internet, articles about RRA. And it was a firm
10 that had -- that was very much involved in civic and
11 charitable work, giving, that sort of thing.

12 Rothstein was awarded many honors by
13 charities for his work, charitable work. The
14 attorneys that I associated with at the firm I
15 thought were very, very high-caliber -- extremely
16 high-caliber. I got to know more people there, of
17 course.

18 One of the clients of the firm was the
19 Conrad Scherer firm. The Conrad Scherer firm was
20 ran by Bill Scherer. Bill Scherer is one of most
21 prominent lawyers in South Florida, certainly in
22 Broward County. And he was a client of the firm.

23 In fact, Judge Stone and I worked on a
24 case that he had with us. It was a major case for
25 that law firm. It was -- that law firm had

1 represented another law firm in a breakup of firms.
2 And the Scherer firm was owed over a million dollars
3 in fees. And the client, the other law firm, was
4 reneging on paying that. And Scherer won at the
5 trial level, and then Judge Stone and I defended
6 that judgment and protected that judgment on appeal,
7 and we were ultimately successful.

8 So you had a very prominent attorney, who,
9 ironically later, became an attorney for clients
10 suing the firm after the firm's demise. But at the
11 time, Bill Scherer -- I was very impressed with the
12 fact that Bill Scherer was a client of the firm.
13 And he spoke publicly in -- I remember a newspaper
14 article on the Internet that Michael Mayo, I
15 believe, with the Sun Sentinel, interviewed Bill
16 Scherer about Rothstein. And I remember Scherer
17 saying that -- he said, I don't know what Scott
18 Rothstein is doing, but whatever is it I like it.
19 He said, I like it so much that my firm has given
20 him his major case. So that was -- I thought that
21 was a testament to the firm's reputation.

22 Q When you joined RRA, how was your position
23 with the firm, your relationship with the firm
24 publicly described? What position did you have?

25 A Well, I had -- I was called a shareholder.

1 The firm had associates, partners and shareholders. I
2 wasn't really an equity owner in the firm. It was --

3 When I was with the Fine Jacobson firm I
4 was designated as a partner. I wasn't really an
5 equity owner in that. So I had the -- that was sort
6 of -- there were probably 10 people that were
7 designated as shareholders.

8 Then under that -- so we had sort of a
9 more senior role with the firm.

10 Q Was it unusual, based upon the experience
11 that you have described, for law firms to designate
12 employees of the firm as being shareholders or
13 partners without those individuals having an equity
14 interest in the firm and ownership interest?

15 A No. I had seen that before. As I said, the
16 Fine Jacobson firm was a 70-attorney firm in Miami that
17 was a very, very prominent firm in the 1980s. And I
18 was a partner with that firm, but I did not have an
19 equity interest in it.

20 Now, afterwards when RRA collapsed,
21 obviously among all of the things that all of us at
22 the firm went through in terms of being interviewed
23 by law enforcement and that sort of thing, I was
24 also interviewed by the Florida Bar. And one of the
25 points they raised was the fact that I was being

1 called a shareholder and yet didn't have an equity
2 interest in the firm.

3 I learned from the Bar, really, that that
4 was not -- not that it was widely -- a widely used
5 practice, but it was one that the Bar was well aware
6 of and did not discipline the attorneys, to my
7 knowledge, certainly not in my case, for having been
8 called a shareholder and not having equity.

9 But I learned from that inquiry that this
10 is a practice that seemed to be common, so to speak,
11 throughout the state.

12 Q You have told us that your relationship
13 with RRA ended in early November of 2009. Tell us
14 about the circumstances under which that occurred.

15 A Well, the exact circumstances are that the
16 firm had already collapsed. November 1 was a Sunday.
17 And that's when I learned that there were problems, and
18 that Rothstein had left the country.

19 November 2 was a Monday. And the attorney
20 that the firm hired to represent it in this
21 Rothstein problem and who had filed a lawsuit for
22 the firm against Rothstein immediately -- Kendall
23 Coffey was the attorney -- I stayed on for a couple
24 more days, probably a week, 10 days, something like
25 that, and then I left.

1 effect. He stepped into the shoes of the law firm, and
2 he was now responsible for -- the firm had clients. He
3 was responsible for collecting whatever fees could be
4 collected for paying employees, for seeing that there
5 was a transition from the firm to other attorneys
6 outside the firm to take over those matters, and also
7 to collect, against whoever was responsible, money to
8 re -- in effect to reimburse the firm for money that
9 was stolen from the firm. So Herb Stettin had that
10 role.

11 Q So tell us, if you would -- you have
12 described the fact that the firm collapsed. How did
13 your knowledge of the circumstances surrounding that
14 collapse evolve?

15 A Well, it evolved very quickly. On Saturday
16 October 31st, I was copied on an email that said --
17 that was -- that didn't have broad circulation within
18 the firm that said something about, Where's Scott?
19 Something like that.

20 Q Scott meaning Scott Rothstein?

21 A Yeah. Two or three days before that, maybe
22 Wednesday of that prior week, at the end of October,
23 there was a charitable event at his home and he didn't
24 attend. He wasn't there. His wife was there and
25 dozens and dozens, if not over 200 people were there.

1 The firm had basically collapsed. We
2 weren't getting a paycheck. I felt I owed it to the
3 people in the firm -- we still had employees that
4 weren't getting paid but still had some benefits --
5 maybe they were getting paid somewhat. The
6 attorneys weren't getting paid. I felt I needed to
7 stay there for some period.

8 And Herb Stettin had been appointed by
9 Judge Streitfeld as a receiver for the firm. I knew
10 Herb Stettin for years and I felt some loyalty to
11 him to stay for a while, at least. But then it got
12 to the point where I had to leave. I had to get a
13 paycheck, so I left probably around November 7th or
14 10th, something like that.

15 Q Explain to the jury, if you would, please,
16 what a receiver is. What was the responsibility that
17 Mr. Stettin was appointed to fulfill by circuit court
18 Judge --

19 A Streitfeld.

20 Q -- Streitfeld.

21 A A receiver is somebody who is appointed by
22 the court -- and it's typically an attorney -- to take
23 charge and to basically run whatever the company is or
24 the business that is now in receivership. And that was
25 the law firm. So he was -- he became the law firm, in

1 It was a big event, but he wasn't there. It raised
2 questions. Where was he?

3 So on Saturday I saw an email that said he
4 has left the country. Something like that. And
5 then Sunday morning or Sunday afternoon, I got an
6 email that -- I forget who sent it -- but said to
7 me, We are going to have a meeting among -- I think
8 the people -- the shareholders at the firm that
9 afternoon or evening, and I went to that.

10 So there were probably about seven or
11 eight or nine of us there. Somebody -- maybe Stuart
12 Rosenfeldt -- had already hired Kendall Coffey, who
13 was -- Kendall is a Miami attorney. Kendall and I
14 practiced together at Greenberg Traurig in the '70s.
15 Kendall became the United States attorney for the
16 Southern District of Florida.

17 Q A presidential appointment?

18 A President Clinton hired him.

19 And then Kendall, at some point, left that
20 position and he was out in private practice.

21 So Kendall was there at this meeting,
22 along with seven or eight of the other attorneys in
23 the firm, and that's when I learned that Scott
24 Rothstein was in Morocco. And I was shocked. And
25 also -- because we were there for a couple hours, I

1 also learned that our trust accounts -- and those
2 are bank accounts that contain client money on deals
3 that are pending, deals that are settled, but the
4 money hasn't been distributed -- millions of
5 dollars -- that those accounts had been looted, they
6 were empty. I learned that that night. So those
7 were the circumstances where I learned that the firm
8 had basically imploded.

9 Q Did there come a point in time when you
10 became aware that Scott Rothstein was operating a
11 Ponzi scheme out of the law firm?

12 A I learned that maybe a day or two after
13 November 1st, and I think I read it in the paper.

14 Q Before the disclosures that you have
15 described to us, the raiding of the trust account and
16 the operation of the Ponzi scheme, having been at
17 that the firm for approximately a year and a half,
18 did you ever have even the slightest suspicion that
19 Scott Rothstein or anyone else associated with
20 Rothstein, Rosenfeldt & Adler were engaged in any
21 kind of improper activity?

22 A No.

23 Q Even in retrospect, as you sit here today,
24 can you look back on that time period and say, You
25 know, I should have realized there was something

1 wrong that was going on here?

2 A No.

3 Q Did all of this news come as a complete and
4 total shock to you?

5 A Absolutely.

6 Q Do you know Brad Edwards?

7 A Yes.

8 Q When and how did you first meet Brad?

9 A I met him at the firm sometime in the first
10 three months, something like that, of 2009, after I had
11 been with the firm for about almost a year. I met him
12 there.

13 Q Well, the jury will have been told, by the
14 time that your testimony is played to them, that Brad
15 joined the firm considerably after you joined and was
16 there for a period of about five months. So you were
17 there for almost a year before Brad joined the firm,
18 correct?

19 A Right.

20 Q Did you ever have occasion to share any
21 responsibilities with Brad Edwards.

22 A Yes. I believe the only matter Brad and I
23 worked on together, if [REDACTED] not mistaken, was the -- or
24 were the three lawsuits against Mr. Epstein.

25 Q We have identified those cases as cases

1 that were being prosecuted on behalf of three young
2 women: [REDACTED], E.W. and Jane Doe. And we will refer to
3 them when I talk to you about them in that same way,
4 referring to them by those initials and that
5 pseudonym.

6 Describe how it is you came to share
7 responsibility for those cases with Brad.

8 A I don't remember the first -- my first
9 introduction to the cases. Obviously, there was a
10 meeting. Obviously, I met Brad for maybe the first
11 time, and I was -- I was asked -- I don't remember by
12 whom -- to work with Brad on these cases I think
13 principally because they were significant cases.

14 I had been practicing for quite a while.
15 I had been a judge in Palm Beach County and had
16 practiced in Palm Beach County. The firm was in
17 Fort Lauderdale. Brad was a Broward County lawyer,
18 I think, primarily. And I had this connection with
19 Palm Beach County.

20 Q Where were the cases pending?

21 A The cases were pending in Palm Beach County.
22 So there was a natural fit for me to work on these
23 cases, and I think that's why I was brought in to work
24 with him.

25 Q You described these as significant cases.

1 What does that mean?

2 A Well, they involve terrible things that
3 happened to these three young women when they were
4 minors, so they were significant in the sense that the
5 personal injury to them was enormous. They were also
6 significant cases in terms of what their potential
7 damages were in terms of dollars.

8 Q Why?

9 A Because juries are asked to use their common
10 sense and their reasoning to come up with a dollar
11 amount to compensate victims of wrongdoing by others.

12 Q We have identified the defendant in these
13 cases as Jeffrey Epstein. Was there anything about
14 the circumstances, nature or character of the
15 defendant that had any influence on your describing
16 these as significant cases?

17 A Yes. If you are going to be representing
18 somebody who has suffered, what I would call --
19 although it wasn't exactly physical, it was mental --
20 catastrophic damages, catastrophic trauma, which I
21 believe these young women experienced when they were
22 minors and was still affected by, if you're going to
23 represent them in that type of case, the case is more
24 significant if the person that you are suing has assets
25 that you can go after so that you -- so that your

1 client can be compensated. And Jeffrey Epstein was a
2 billionaire.

3 And so in terms of compensating, making
4 good to these young women, which would be called
5 compensatory damages, this was a very significant
6 case. You had terrible injuries, mental injuries.
7 You had a defendant who, to me, was clearly libel,
8 and so there would a very, very significant award of
9 compensatory damages.

10 In addition, if you were able to prove a
11 certain degree of willfulness, that these acts --
12 that he did these things intentionally, or he did
13 them with a certain mindset, you could recover,
14 what's called under the law, punitive damages.

15 Punitive damages are based on how wealthy
16 the defendant is, so that the defendant could be
17 punished. And if a person is extremely wealthy,
18 then an award of punitive damages that's \$100,000,
19 which would seem like a large award if it was
20 awarded against me, would be an insignificant award
21 of punitive damages against somebody who is
22 billionaire.

23 So to -- so the firm was in a position in
24 representing these young women to go to a jury and
25 ask for very, very high number of -- in dollars

1 But you do recall Paul Cassell's
2 involvement. What about other local lawyers? Were
3 there other local lawyers who were participants in
4 the prosecution of the cases against Jeffrey
5 Epstein?

6 A Yeah. Not representing our three clients,
7 but there were other firms that were representing other
8 young women that had been abused by him. Yes, I did
9 know of those firms.

10 There was the Podhurst firm in Miami, a
11 very prominent firm; Bob Josefsberg, who I have
12 known for years. Bob is one of the most prominent
13 attorneys also in South Florida. He had a case --
14 he had cases against Mr. Epstein. Or he had clients
15 -- I don't know if he actually filed cases, but he
16 had clients that were victims of Mr. Epstein.

17 Sid Garcia is a very prominent attorney in
18 Palm Beach County, who was also representing
19 victims.

20 Spencer Kuvin was another lawyer. Ted
21 Leopold, another prominent attorney, he also had
22 clients. The Searcy Denney, who is a prominent
23 firm, had clients as well against Mr. Epstein. And
24 I believe an attorney named Adam Horowitz also.
25 Those are attorneys that I recall had similar cases

1 compensatory damages, as well as an extremely high
2 number in punitive damages, because it would take a
3 very large amount of punitive damages to punish
4 somebody who is a billionaire.

5 Q Did the prosecution of the three lawsuits
6 for which you and Brad Edwards were responsible
7 involve efforts of any lawyers outside of RRA?

8 A There was a Paul Cassell who was co-counsel
9 with Brad. I never met him. I have spoken to him.
10 And he had been working with Brad -- Brad brought these
11 cases to the firm. He didn't -- he didn't get hired on
12 these cases after he joined RRA. He had already filed
13 these cases, I believe. I know he had them -- the
14 ladies as clients before he joined the firm. And
15 Cassell was co-counsel with him on those.

16 So in terms of attorneys that were
17 co-counsel with us, he was a co-counsel representing
18 the three young women that we represented.

19 Q Tell us about Paul Cassell.

20 A Well, I don't know a whole lot about him,
21 other than he lives out of state. And I think he's
22 connected with a university. I may be mistaken.

23 Q No, I think that you are recalling
24 correctly, but we will get those details from other
25 witnesses.

1 to ours.

2 Q Tell us about the extent to which you were
3 working together in coordinating efforts with those
4 other lawyers.

5 A Well, we had -- we were communicating, we
6 were comparing notes, we were strategizing with them.

7 Q What is a joint prosecution agreement?

8 A A joint prosecution agreement is an agreement
9 typically in writing -- although it doesn't have to
10 be -- between the attorneys for different clients to
11 pool their efforts and to keep confidential their
12 confidential communications and to jointly assist each
13 other because their clients have a common goal and are
14 typically litigating against the same person or
15 company. It's an agreement to share information.

16 Q Did such an agreement exist to which you
17 and you Brad, as lawyers with RRA, were cooperating
18 in a joint prosecution effort with Bob Josefsberg,
19 Spencer Kuvin, Sid Garcia, Ted Leopold, Adam Horowitz
20 and the Searcy Denney law firm?

21 A Yes.

22 Q To what extent did Brad Edwards assume a
23 leadership role in that prosecution effort?

24 A With our firm, with RRA, I was -- I took a
25 secondary role to Brad. Brad was the lead attorney.

1 These were his clients, and I had -- I had specific
2 roles, really. I wasn't handling the same breadth of
3 issues that Brad was. I was handling certain specific
4 aspects to the case, and also strategizing with Brad.
5 But he had the lion's share of the representation.

6 Q And were there also joint prosecution
7 conferences regarding how discovery was conducted,
8 who was to lead the discovery efforts, what discovery
9 was to be taken among this group of lawyers who were
10 all prosecuting claims on behalf of child victims
11 against Jeffrey Epstein?

12 A Yes. We had verbal. I think I attended one
13 in person.

14 Q Did those meetings go on throughout your
15 involvement in the prosecution of those claims?

16 A Yes.

17 Q Describe the nature and extent of the
18 investigation into Jeffrey Epstein's activities that
19 was undertaken in connection with this group effort
20 to hold Mr. Epstein responsible for the victimization
21 of children.

22 MR. LINK: Object to the form.

23 BY MR. SCAROLA:

24 Q Let me restate the question.

25 Describe, if you would, please, the nature

1 and extent of the investigation that was undertaken
2 into Jeffrey Epstein's wrongdoing.

3 MR. LINK: Object to the form.

4 THE WITNESS: Well, it was pretty
5 extensive. There were a number of people
6 interviewed and you had a network of -- you
7 had people that were -- that surrounded
8 Epstein in terms of members of his entourage
9 or his organization or -- that worked for
10 him, and there was a major effort to locate
11 these individuals that may be potential
12 witnesses.

13 There were third parties that -- such
14 as pilots that were -- we were trying to
15 track down or communicate with, because
16 there had been statements made about how
17 some of these victims were on planes that
18 were chartered or owned by Mr. Epstein, so
19 there were efforts to get the flight logs,
20 and to depose people who -- many of whom
21 turned out to be very prominent, nationally,
22 individuals that were on planes that we
23 believed contained -- at the same time there
24 were young women on the planes -- to track
25 down those witnesses.

1 BY MR. SCAROLA:

2 Q When you refer to young women being on the
3 planes, did you ever make a determination as to
4 whether there were, in fact, children being
5 transported on those planes by Mr. Epstein?

6 A I have to correct myself. When I talk about
7 young women, they were young women when we were
8 representing them and at the time that I was involved.
9 But at the time these things happened, they were
10 minors.

11 Q You were involved in the representation of
12 three specific individuals. Of what significance was
13 it in your representation of those three individuals
14 to be investigating and cooperating in the
15 investigation of offenses alleged to have
16 committed -- to have been committed by Jeffrey
17 Epstein against other children?

18 A Well, although we just represented three
19 minors, or three young women at the time, the rules of
20 evidence at a trial do allow an attorney for -- would
21 have allowed us, as attorneys for these women, to put
22 on evidence of other victims and other bad acts by
23 Mr. Epstein.

24 There's a Florida statute, 90.404, that
25 allows other acts, even though they weren't

1 committed against your particular client, to be
2 introduced to show a pattern, a practice, a modus
3 operandi, motives, and so it was important for us to
4 investigate any wrongdoing by Mr. Epstein against
5 any young woman that was similarly situated and
6 groomed and recruited, like ours were, when they
7 were teenagers. That would all possibly have been
8 evidence that could be presented to a jury in a
9 trial, even though our clients weren't directly
10 involved in those instances.

11 Q In light of the rules of evidence and the
12 Florida statute that you have referenced, did you
13 perceive that any obligation existed to investigate
14 alleged crimes committed against other children by
15 Jeffrey Epstein under the same circumstances as your
16 own clients had been victimized?

17 A I think it would have been professional
18 malpractice not to have investigated other instances,
19 because they were all potentially relevant and it was
20 powerful evidence that if he did it to other women, he
21 did it to us. If the techniques were the same and the
22 same pattern of activity existed -- so I think we were
23 bound as attorneys to conduct these other
24 investigations.

25 Q Were any of your three clients molested by

1 Jeffrey Epstein onboard any of Jeffrey Epstein's
2 jets?

3 A I don't recall that, no.

4 Q In spite of the fact that there were no
5 specific allegations that any of your clients were
6 abused onboard Jeffrey Epstein's jets, why did you
7 pursue an investigation as to what went on onboard
8 the jets?

9 A Well, if -- if minors were molested on those
10 jets, even though they weren't our clients, it would
11 fit the pattern of what Mr. Epstein had done to our
12 clients, and could have been evidence that the judge
13 would have allowed the jury in that case to hear.

14 Q You mentioned that names of high-profile
15 individuals and celebrities came up during the course
16 of the investigation. Were investigative leads
17 pursued with regard to those individuals?

18 A I didn't have any direct involvement of that.
19 I just know that we talked about specific individuals,
20 that they were on the planes or they were at
21 Mr. Epstein's house.

22 Whether -- when I was working on the
23 case -- the cases before the firm collapsed --
24 whether we issued subpoenas or tried to issue
25 subpoenas to those persons, I don't recall that.

1 Why would Jeffrey Epstein be flying on a
2 plane with a minor child who is not his child? And
3 what connection did that child have to him? Why
4 would she be on the plane. That would tend to prove
5 that he had evil motives and it had fit the pattern
6 of molestation of our clients.

7 So the slightest -- any proof that he was
8 in the presence of minor children that weren't his
9 children that he had no connection with was valuable
10 evidence because it fit the pattern.

11 Q What was the geographic scope of the
12 investigation that was undertaken with regard to
13 Jeffrey Epstein?

14 A Well, it was almost global, really, because
15 of the range of his movements. It was certainly
16 national. I know he had also properties -- or a
17 property in the Bahamas -- the Caribbean, so there were
18 ties throughout the western hemisphere.

19 Q As an active participant responsible for
20 sharing the task of representing these three clients
21 in claims against Jeffrey Epstein involving patterns
22 of the molestation of children, was there ever
23 anything illegal, unethical or even unreasonable
24 about the things that were investigated in the
25 Epstein cases?

1 Q If, in fact, there was evidence that
2 high-profile individuals and celebrities were in a
3 position to have observed Jeffrey Epstein's conduct
4 in the presence of minors who turned out to be
5 victims of sexual molestation, would there be any
6 reason to refrain from pursuing investigative leads
7 with regard to those individuals?

8 MR. LINK: Object to the form.

9 THE WITNESS: No.

10 BY MR. SCAROLA:

11 Q You spoke about an obligation to pursue
12 investigative leads. How would that obligation
13 pertain, if at all, to investigative leads that lead
14 to high-profile and celebrity individuals?

15 A You know, the Bar has in writing that an
16 attorney is supposed to zealously represent a client.
17 To me we were duty-bound to pursue these leads. And I
18 think that we were obligated to do it.

19 If Mr. Epstein was on an airplane, either
20 his plane or a plane he chartered, and he was with
21 another person, whether that person was a
22 high-profile person or somebody else, and there was
23 a minor, a young minor -- female minor on that
24 plane -- whether molestation occurred on that plane
25 or not, to me that's powerful evidence.

1 A No.

2 Q Was there ever anything illegal, unethical
3 or even unreasonable about the people included in the
4 scope of that investigation?

5 A No.

6 Q Was there ever anything illegal, unethical
7 or even unreasonable about the way in which the
8 investigation was conducted?

9 A No.

10 Q Did you ever have any reason to question
11 the legitimacy of any of the claims that were being
12 prosecuted against Jeffrey Epstein by your law firm
13 and by you?

14 A No.

15 Q Did you ever have any reason to question
16 the legitimacy of any of the claims that were
17 prosecuted against Jeffrey Epstein by those with whom
18 you were participating in a joint prosecution
19 agreement?

20 A No.

21 Q You have told us that, from your
22 perception, based upon your experience and training,
23 these were significant cases. Did you ever form an
24 opinion regarding the potential value of the claims
25 from a compensatory damage standpoint?

1 A They were in the multi-millions of dollars
2 from a compensatory standpoint.

3 Q And did you form an opinion regarding the
4 potential punitive damage value of the cases?

5 A Again, multi-millions of dollars.

6 Q Who controls the decision as to whether to
7 settle a civil lawsuit?

8 A Well, as in any case, the client calls the
9 shots and makes the decision to settle.

10 Q What was your perception of the
11 difficulties, if any, faced by the child victims who
12 were prosecuting claims against Jeffrey Epstein?

13 A In terms of bringing their claims?

14 Q Yes, sir. In terms of pursuing these
15 claims. Did they face any difficulties, or did they
16 just turn this matter over to their lawyers and they
17 didn't need to be concerned about it from that point?

18 MR. LINK: Object to the form.

19 THE WITNESS: Well, yeah, they made
20 themselves targets of personal criticism by
21 Mr. Epstein's attorneys. And similarly to
22 how, I think, the plea deal came down, same
23 reasons.

24 But the process that we are involved in
25 right now is discovery. So the discovery

1 So there was then discovery directed to
2 us to her to discuss her life as a
3 prostitute. Well, as a prostitute, a
4 prostitute would have a pimp, a guy that
5 would control her, that would be her boss,
6 and who would have her under his thumb, and
7 who could threaten her and physically harm
8 her if she didn't do what he wanted.

9 Well, Epstein's attorneys wanted us to
10 disclose -- wanted our client to disclose
11 those relationships, who was her pimp,
12 things like that. Her life was now
13 completely in danger, so we had to deal with
14 those issues.

15 So every person who brings a lawsuit
16 where their main damage is what's been done
17 to their mind, not so much what's been done
18 to their body -- these young women weren't
19 physically disabled. They were mentally
20 disabled and their lives had been destroyed.

21 Any person that brings that type of a
22 lawsuit, everything about them is open to
23 investigation. That's part of bringing a
24 lawsuit. That was particularly difficult in
25 these circumstances. So those young women

1 process with regard to bringing these claims
2 by these young women involved opening up
3 their lives to Mr. Epstein and his
4 investigators and to the public.

5 These were young women who were groomed
6 by him. They were identified by him and his
7 associates as candidates for his
8 molestation. They were from broken homes,
9 broken families. Their mothers might have
10 been prostitutes themselves. And these
11 young women's lives were destroyed by him.

12 And consequently, after he was finished
13 with them, they had to then live their
14 lives, and many of them had problems, and
15 they faced hardships as a result of what he
16 did to them. And all of those things would
17 be made public and would be investigated.

18 And you also had a situation -- it was
19 a very difficult situation -- I was directly
20 involved with it -- in terms of courtroom
21 appearance where, if [REDACTED] not mistaken, one
22 or two -- maybe one of our clients was
23 accused of being a prostitute herself as she
24 grew up and after Epstein was finished with
25 her.

1 went through a lot during the time that I
2 was representing them in that regard. It
3 was very, very difficult for them to go
4 through this lawsuit process.

5 It wasn't just, here is my case,
6 Attorney. You represent me. They were now
7 part of it and they were paying the price.

8 BY MR. SCAROLA:

9 Q Did you ever observe anything during the
10 course of the prosecution of these claims that was
11 intended to improperly or falsely exaggerate the
12 seriousness of the impact that these molestations had
13 had on your clients?

14 A I wouldn't go so far as to say that it was an
15 attempt to exaggerate it. I think that the attorneys
16 that we were facing were trying to diminish the effect
17 of what Epstein did to our clients by saying that
18 they somehow -- that our clients somehow would have
19 done these things anyway.

20 But I can't really -- it was very
21 difficult. It took a lot of courage -- a lot of
22 courage for these young women to pursue these cases.
23 But I couldn't say that -- really that it was
24 anything unethical that the opposing attorneys were
25 doing. They were representing him zealously, too.

1 Q So let's focus on what you and Brad Edwards
2 were doing. Was there anything ever improper that
3 was undertaken to try to exaggerate the value of
4 these claims or the impact that Jeffrey Epstein's
5 molestation had had on these young children?

6 A No.

7 Q Did you ever see anything that was done in
8 prosecuting the Epstein cases that was illegal,
9 unethical or unreasonable in any way?

10 A No.

11 Q Was anything done that was not part of a
12 completely proper effort to protect the legal rights
13 of your three child victims?

14 A No.

15 Q Did there come a time when you learned that
16 Rothstein had used the cases that we have been
17 referring to to attract Ponzi scheme investors?

18 A I learned that sometime in the beginning of
19 November of 2009 by -- really, by reading it in the
20 paper.

21 Q Prior to that time, was there any reason
22 whatsoever for you to have even suspected that any of
23 those claims being legitimately prosecuted by you and
24 Brad Edwards were being used for any improper
25 purpose?

1 A No.

2 Q Even as you sit here today, looking back in
3 retrospect, is there anything that you can point to
4 and say, you know, I didn't recognize it at the time,
5 but maybe that should have raised some suspicion?

6 A No. The idea that he was conducting a Ponzi
7 scheme had never -- I never had the slightest inkling
8 that that was occurring.

9 Q We are here taking your deposition today
10 because, as you know, Jeffrey Epstein filed a lawsuit
11 against Brad Edwards accusing him of having been a
12 knowing participant in Scott Rothstein's Ponzi
13 scheme --

14 MR. LINK: Object to the form.

15 BY MR. SCAROLA:

16 Q -- of having been involved in the
17 commission of a variety of serious crimes.

18 What was your reaction when Epstein sued
19 Brad alleging that he had participated in
20 fabricating or exaggerating claims against Jeffrey
21 Epstein?

22 A I read that in the paper and I was stunned.

23 Q Why?

24 A It was outrageous.

25 Q Had you come to know the manner in which

1 Jeffrey Epstein was attempting to defend himself over
2 the course of the months that you were involved in
3 these claims?

4 A Well, he took the Fifth amendment and then he
5 went after the clients -- or his attorney did very
6 aggressively.

7 Q In light of his aggressive attacks on the
8 victims, did it come as a surprise to you that
9 Jeffrey Epstein had attempted to attack Brad Edwards?

10 A Well, it was -- again, I was still stunned
11 that he did.

12 Q In addition to prosecution of these three
13 civil lawsuits against Jeffrey Epstein, did you
14 become aware of the fact that Brad was volunteering
15 his services to challenge the validity of Jeffrey
16 Epstein's criminal plea deal?

17 A I didn't know what Brad's financial
18 arrangement was at all. I did know that he was
19 representing, I think, the three same clients in a
20 federal lawsuit challenging the plea agreement.

21 Q Did you become aware of the terms of that
22 plea agreement?

23 A Yes.

24 Q And what was your reaction when you learned
25 that Jeffrey Epstein had been granted federal

1 immunity -- not only for himself, but from -- for all
2 of his co-conspirators -- against any federal
3 prosecution in exchange for an 18-month state jail
4 sentence?

5 A It was an outrageously wrong plea agreement.
6 I was embarrassed for the -- that the U.S. Attorney's
7 office and the state attorney in Palm Beach County
8 would agree to such a deal.

9 Q What was the significance of Brad's
10 involvement in attempting to undo that transaction on
11 behalf of Jeffrey Epstein's victims?

12 MR. LINK: Object to the form.

13 THE WITNESS: Well, it was the right
14 thing to do. They were -- I didn't have any
15 direct involvement in that proceeding. As I
16 understood it, as in Florida -- Florida has
17 a law -- as a criminal judge, I try to
18 uphold that and I saw it unfold in front of
19 me, because people who are victims have a
20 right to notice and to participate and to be
21 present during key facets of the prosecution
22 of the person who is the wrongdoer, the
23 person who is charged with a crime,
24 particularly when it came to a sentencing
25 hearing. And the right of a victim to

1 attend the sentencing hearing and to be
2 apprized that it's coming and to have the
3 right to give input to the prosecutor is a
4 right that I try to enforce, and I saw it
5 unfold. And the state attorney's office
6 complied with that when I was on the bench,
7 so I was somewhat familiar with that
8 concept. We are dealing here with the
9 federal prosecution. I came to learn that
10 under federal law, there's a similar law to
11 the one that we have under the state system.

12 And so I thought it was very
13 significant. It was unique for an attorney
14 to be representing victims who had -- where
15 the perpetrator was prosecuted in a federal
16 case, and the attorney was trying to uphold
17 the right of these victims to have
18 participated in and been consulted and given
19 notice for an opportunity to be heard with
20 regard to the sentencing of the person who
21 did these crimes to them. I thought Brad
22 was doing something that I had never heard
23 an attorney do. It was a very courageous
24 act and he should be commended for it.
25

1 BY MR. SCAROLA:

2 Q During the course of your decades of
3 practice, including the time you spent as a circuit
4 court judge, had you ever even heard of a plea deal
5 where not only was the defendant himself immunized,
6 but all of his unnamed co-conspirators were given
7 immunity for all of their unnamed crimes?

8 MR. LINK: Object to the form.

9 THE WITNESS: No.

10 BY MR. SCAROLA:

11 Q Except as an effort to try to intimidate
12 and bully Brad Edwards into backing off what Brad was
13 doing both in attempting to hold Jeffrey Epstein
14 civilly responsible for his wrongs and to challenge
15 the plea that he had been permitted to enter, are you
16 aware of any reason whatsoever that would justify
17 Jeffrey Epstein in suing Brad Edwards?

18 MR. LINK: Object to the form.

19 THE WITNESS: No.

20 MR. SCAROLA: Thank you. I don't have
21 any further questions.

22 MR. LINK: Mr. Berger, before we start
23 cross-examination, do you want to take a
24 break or are you okay?

25 THE WITNESS: I would go with whatever

1 the court reporter would like to do.

2 THE VIDEOGRAPHER: Going off the record
3 at 10:45 [REDACTED].

4 (A recess was had.)

5 THE VIDEOGRAPHER: Going back on the
6 video record. The time is 10:55 [REDACTED].

7 CROSS-EXAMINATION

8 BY MR. LINK:

9 Q Good morning.

10 A Good morning.

11 Q As you know, [REDACTED] Scott Link, and [REDACTED]
12 representing the plaintiff, Jeffrey Epstein, in this
13 matter.

14 We, too, hope that your surgery is
15 successful and that you recover fully.

16 A Thank you very much.

17 Q And we appreciate you being here today.

18 During your direct examination, one of the
19 things that you were talking about was the Ponzi
20 scheme that Mr. Rothstein ran as part of the -- you
21 called it RRA -- that's the law firm -- the
22 Rothstein firm, right?

23 A Well, you said right. It wasn't part of the
24 RRA firm.

25 Q It wasn't?

1 A No.

2 Q So there wasn't any part of the cases or
3 the employees or anybody at the Rothstein law firm
4 that were participants in the Rothstein Ponzi scheme.
5 Is that your testimony?

6 MR. SCAROLA: Objection, compound.

7 THE WITNESS: I mean, there were
8 employees that were -- I don't consider it
9 part of the RRA firm. It was a rogue
10 criminal activity that was outside the
11 purpose of the firm and -- I mean, I admit
12 it was done by Rothstein. And certainly
13 several of the attorneys were prosecuted.
14 Some of them, of course, were prosecuted,
15 but having nothing to do with the Ponzi
16 scheme, such as Steve Lippman and Stuart
17 Rosenfeldt, as far as I know. And there
18 were a couple of employees that were
19 implicated in connection with the Ponzi
20 scheme. And there was even one or two
21 clients that were part of the Ponzi scheme.

22 But maybe [REDACTED] being -- playing on
23 semantics. I just don't consider it to be
24 part of the firm. But I have acknowledge
25 those connections that you are pointing out.

1 BY MR. LINK:

2 Q Do me a favor. Tell the jury what a Ponzi
3 scheme is.

4 A A Ponzi scheme is -- is -- not that I know --
5 I have learned much more as to what it is by reading
6 about the Rothstein scam. A Ponzi scheme is where you
7 solicit investors and you have something that you're
8 promoting with their money. You're soliciting their
9 money and you are paying them a return on their money,
10 not from profits of whatever enterprise it, but you are
11 paying them from money that you are getting from
12 investors after them.

13 So the business enterprise that you're
14 promoting, that you're soliciting the money for is
15 not really a legitimate business enterprise with a
16 purpose of being self-sufficient. It's one that's
17 funded by the continual investments or investments
18 by investors and investors after them, and so it has
19 no substance. So at some point it's got to fall
20 apart because you can't keep bringing in new
21 investors and milking new investors to keep
22 everything afloat and payoff the return to the other
23 investors.

24 Q So would you agree with me Mr. Rothstein
25 was fabricating settlements and using those

1 fabricated settlements to try to entice folks to give
2 him money?

3 A Yes.

4 Q Investors to give him money?

5 A Yes.

6 Q And he would use actual, sometimes, cases
7 that were pending at the law firm?

8 A Apparently that is what he did. I learned
9 that after the fact.

10 Q Can you tell the jury what Mr. Rothstein
11 did with the three cases that were pending against
12 Mr. Epstein? How did Rothstein use them?

13 MR. SCAROLA: Objection. Predicate.

14 THE WITNESS: I don't know exactly. I
15 have read -- I have only read that he
16 physically had the files of those cases, the
17 case files, and I think had -- at some point
18 had brought them into his office after
19 hours.

20 I don't know what he did with them. I
21 don't know if he showed them to investors or
22 he was just familiarizing himself with the
23 details, because in reading some other
24 statements by people who were scammed, one
25 of the things that -- well, one person in

1 particular who eventually wrote a book --
2 Sako -- something like that. He said that
3 the reason -- one of the reasons he backed
4 out of investing money is because he wasn't
5 allowed to see the file.

6 So I don't know if Rothstein actually
7 physically showed these three files to
8 victims of his scam. But he certainly had
9 physical possession of them and used them in
10 some way.

11 BY MR. LINK:

12 Q So you don't know the details, but you are
13 aware that Rothstein used the three pending cases
14 against Epstein and fabricated settlements and
15 information in order to try to keep his Ponzi scheme
16 alive?

17 MR. SCAROLA: Objection. Secondhand
18 knowledge and compound.

19 THE WITNESS: Again, when you say, I
20 know, I heard that. I don't know if it was
21 all three. And I don't know exactly how he
22 used them in terms of -- since we didn't
23 have -- you know, the cases were going by
24 initials -- and I just don't know what use
25 he put them to.

1 BY MR. LINK:

2 Q Can you tell me the first time you spoke to
3 Mr. Rothstein about one or all of the three pending
4 cases against Mr. Epstein?

5 A You know, [REDACTED] not even sure I talked to Scott
6 about the cases.

7 Q You don't have a memory, as you sit here
8 today, of participating in group conversations with
9 the lawyers involved in the Epstein cases meeting
10 with Mr. Rothstein?

11 A No.

12 Q How often would you meet with
13 Mr. Rothstein?

14 A You know, I would see him in the hall. I
15 would go to his office if I had a question. How often?
16 Sometimes I saw him every day.

17 When you say meet with him, we didn't
18 have -- I mean, we did have -- we did have -- I
19 don't know if they were regular or periodic, but we
20 did have meetings of shareholders in the firm. Not
21 to discuss specific cases, really, but just to --
22 just firm business. So I saw him probably everyday.

23 Q So mentioned the firm's shareholders. That
24 was the small elite group of the senior lawyers of
25 the firm, right?

1 A Well, it was the small group of the senior
2 attorneys. I don't know that I would call it elite.
3 Q And you were one of them?
4 A Yes.
5 Q And you held yourself out to the public as
6 a shareholder?
7 A Yes.
8 Q What does it mean to be a shareholder?
9 A It could mean -- I guess the common
10 knowledge -- or the common connotation would be
11 somebody that owns a piece of the company.
12 Q Sure. If you own shares in the company,
13 right?
14 A Right.
15 Q Did you, in fact, own shares company?
16 A No.
17 Q Yet you did hold yourself out as a
18 shareholder?
19 A Yes.
20 Q I fact, I've read newspaper articles that
21 talk about you as a shareholder. Do you remember --
22 A No --
23 MR. SCAROLA: Excuse me.
24 Object to the form of the question.
25

1 BY MR. LINK:
2 Q Do you remember seeing newspaper articles
3 holding you out as a shareholder?
4 MR. SCAROLA: Objection. Secondhand
5 knowledge, hearsay.
6 THE WITNESS: I don't remember
7 seeing -- I can't recall an article where I
8 was labeled as a shareholder. I wouldn't
9 doubt it, though, because that's what I was
10 called.
11 BY MR. LINK:
12 Q That's what you were called and that's what
13 you held yourself out as, right?
14 MR. SCAROLA: Same objection.
15 THE WITNESS: Right.
16 BY MR. LINK:
17 Q How many shareholders were there in this
18 roughly 70-lawyer firm?
19 A I think there were about 10.
20 Q And who were the other shareholders?
21 A Stuart Rosenfeldt, Russell Adler, Les
22 Streitfeld, Steve Lippman. There were others -- Marc
23 Nurik might have been -- [REDACTED] pretty sure Nurik was a
24 shareholder. I just don't remember other names.
25 Q And when you would have these shareholder

1 meetings to discuss the business of the firm, did you
2 talk about the financial side of the business?
3 A We talked about finances just in general, not
4 really -- not numbers in terms of, for example, the
5 firm had revenue of X dollars this month. No, we
6 didn't have that type of discussion.
7 Q Were you aware of revenue that the lawyers
8 in the firm were generating?
9 A No.
10 Q You are not aware that in 2008 the total
11 revenue was about \$8 million?
12 A No.
13 Q How much revenue a year did you generate,
14 sir?
15 A I don't remember.
16 Q How much were you paid when you first
17 started?
18 A Three hundred thousand a year.
19 Q Did your salary go up when you were there?
20 A No.
21 Q Did you have any clients when you started
22 at the firm?
23 A Well, I had just left the bench, so I didn't
24 have clients, no.
25 Q How much was your salary when you were on

1 the bench?
2 A About 150,000.
3 Q So you doubled your salary by going with
4 the Rothstein firm?
5 A Correct.
6 Q Did you have any offers from law firms
7 other than the Rothstein firm?
8 A No. Not offers.
9 Q During the time that you were with the
10 Rothstein firm, you said things changed, the way --
11 the office size and things of that nature, right?
12 A Right.
13 Q Mr. Scarola asked you about whether there
14 was anything you saw that was a bit of a red flag at
15 the time or when you look back. I want to talk to
16 you about the changes that you saw, okay?
17 Can you describe for the jury how you
18 would get to Mr. Rothstein's office in October 2009?
19 What process did you have to go through?
20 A You had to speak to -- Ms. Feiss, I believe,
21 was his assistant -- or somebody else to see if Scott's
22 in, could you talk to him.
23 Q Was his office just sitting out there on
24 the main floor like your office is here at this law
25 firm?

1 A Well, it was on the main floor. It was --
 2 there was a corridor, and his office was behind the
 3 door at the end of the corridor.
 4 Q Was there security guards? In order to get
 5 to his office you had to go passed security guards?
 6 A There was security at times in the firm. I
 7 wouldn't -- keeping in mind I was in Boca most of the
 8 time around that time, so I couldn't say whether there
 9 was security in the Fort Lauderdale office 24/7. But
 10 there were a couple of security guards that -- they
 11 didn't wear uniforms, but they were bodyguards. That's
 12 how I phrase them.
 13 Q Rothstein had bodyguards?
 14 A Yeah.
 15 Q Have you ever had a bodyguard as a lawyer?
 16 A No.
 17 Q Did you think it at all strange that
 18 Mr. Rothstein had a couple of bodyguards protecting
 19 him?
 20 A I thought it was strange, yeah.
 21 Q I have heard that to get to his office that
 22 you had to actually pass down this corridor and that
 23 there were sort of obstacles and hurdles in order to
 24 get in there. It wasn't as though you could walk
 25 down the main hallway, open his door and walk in.

1 MR. SCAROLA: Object to the form of the
 2 question.
 3 THE WITNESS: If you're talking about
 4 something like a mall would have an
 5 obstacles for somebody -- they couldn't
 6 drive a car through a door at Macy's or
 7 something like that -- I don't remember any
 8 obstacles.
 9 BY MR. LINK:
 10 Q You don't remember there being an off-duty
 11 sheriff in the building providing security?
 12 A Not really, no.
 13 Q Do you remember the electronic surveillance
 14 equipment that Mr. Rothstein had at the firm?
 15 A Yes.
 16 Q Describe it for us, please.
 17 A He had -- there was a loudspeaker, and I
 18 learned that it was a two-way one where he could listen
 19 to what you were saying.
 20 Q In your office?
 21 A No. That I didn't know.
 22 Q How about in the conference room?
 23 A I didn't know specifically where.
 24 Q Where would he be listening to people at?
 25 A The common areas.

1 Q Just in the common areas you thought?
 2 A I didn't know that there were speakers or
 3 wiretaps or surveillance in people's offices.
 4 Q Were you aware that he had a private
 5 elevator in his office?
 6 MR. SCAROLA: Could we identify when
 7 this awareness arose?
 8 MR. LINK: Mr. Scarola, we already
 9 talked about it being October 2009.
 10 THE WITNESS: [REDACTED] sorry, you talked
 11 about -- you asked me how did you get in the
 12 office in October of 2009.
 13 BY MR. LINK:
 14 Q That's what [REDACTED] talking about.
 15 A I wasn't aware of electronic surveillance in
 16 October of 2009. I learned that afterwards.
 17 Q You were not --
 18 A No.
 19 Q So while you were at the firm you were
 20 unaware that there was electronic surveillance at the
 21 firm?
 22 A Yes.
 23 Q Were you aware that his office had a
 24 private elevator?
 25 MR. SCAROLA: When?

1 BY MR. LINK:
 2 Q Sir, all of these questions are
 3 October 2009, okay?
 4 A When you say a private elevator -- when I
 5 joined the firm in June of 2008, there was an elevator
 6 that Stuart Rosenfeldt and Scott Rothstein used that
 7 was in the building. It's not like in October of 2009
 8 they had an elevator constructed.
 9 There was an elevator that would -- it
 10 wasn't in the public corridor where the other
 11 elevators were.
 12 Now, whether this elevator serviced other
 13 people in the building or not, I have no idea. I
 14 never was on it.
 15 Q You were never invited to ride on
 16 Mr. Rothstein's elevator?
 17 A Well, you call it Mr. Rothstein's elevator.
 18 It was in a location that accessible by Stuart and
 19 Scott. Whether it could have been accessible by
 20 somebody else, I don't recall. I might have ridden on
 21 the elevator, but I don't know that it was one that was
 22 specifically for them as opposed to any other tenants
 23 in the building.
 24 It wasn't one that was publicly used. I
 25 will agree to that.

1 Q You mentioned Mr. Kendall Coffey. Did you
2 read his report on the layers of secrecy that he
3 described as he was trying to say that what Rothstein
4 was doing was unknown because of the secret world
5 that Mr. Rothstein created at the firm. Did you read
6 that report, sir?

7 A No, I didn't read the report.

8 Q Are you familiar with what [REDACTED] talking
9 about?

10 A No, I didn't know there was a written report.
11 I did see Kendall Coffey on TV. He invited newspaper
12 reporters -- he invited reporters and a cameraman to
13 walk through the office. That I did see.

14 Q Okay, tell us -- tell the jury what it is
15 that you saw. What was Mr. Kendall Coffey pointing
16 out about the layer of Mr. Rothstein?

17 MR. SCAROLA: Excuse me. Could we set
18 a time frame, please?

19 BY MR. LINK:

20 Q Was there more than one time you saw
21 Mr. Coffey on TV?

22 A No, this was probably in November of 2009.

23 Q Can you share with the jury what Mr. Coffey
24 was showing the world about Rothstein's inner
25 sanctum.

1 But before that, Scott's office, basically,
2 you could just walk in on his office.

3 I once walked into Scott Rothstein's
4 office -- again, before the remodeling --
5 and -- within the Jewish religion, people,
6 if they are devout believers, would do
7 something called davening, and that's
8 praying. My father did that every morning.
9 And that would mean you had the Bible, the
10 Torah, and you prayed and you chanted and
11 you talked in Hebrew.

12 I walked in and Scott was davening. It
13 was so -- excuse me. So it was almost an
14 open door policy for most of the time that I
15 was there until this remodeling occurred.

16 BY MR. LINK:

17 Q Right. And that's what [REDACTED] focused on,
18 which is how things changed during the time that you
19 were at the firm.

20 A Right.

21 Q So he had an open door policy, then there's
22 a remodeling and his open door policy vanished,
23 correct?

24 A To most extent, yes.

25 Q Could you just walk up and go into his

1 MR. SCAROLA: Object to the form of the
2 question.

3 THE WITNESS: He showed them that to
4 get to the office, you had to walk through a
5 corridor. This is just what I can visually
6 see.

7 Again, I do not recall obstacles, as
8 you put it.

9 Certainly, there weren't any security
10 guards standing there when Coffey was
11 showing the newspaper reporters things.

12 Then there was a door. The door -- you
13 would open the door and there was the
14 office. What he was actually showing to a
15 TV audience in the way of security, you
16 really couldn't tell because there was
17 nobody there and he wasn't -- he couldn't
18 point to anything electronic. He was just
19 showing where the corridor was and where the
20 doors were and there was a door. It could
21 have been a double door or not. And that
22 was -- again, that was -- as I said, the
23 office had been remodeled.

24 How soon before that -- I don't
25 remember when that remodeling had occurred.

1 office without being cleared first?

2 A Sometimes, yes.

3 Q Into the remodeled space?

4 A Yeah. It's happened.

5 Q So you had that level of relationship with
6 Mr. Rothstein that you could go to the Fort
7 Lauderdale office, once it was remodeled, and simply
8 walk in, open his door and go see him without having
9 to clear any staff person or security to do that; is
10 that right?

11 A Sometimes that happened once or twice, and it
12 happened with other people, too. It's just that
13 somebody wasn't there.

14 You would walk down the corridor. And if
15 somebody didn't say Scott's busy or something like
16 that, you just knock on the door and he would say,
17 Come in, something like that. That may have
18 happened a couple of times. It wasn't because of me
19 or who I was. It was just the timing of it. It
20 wasn't like it was 24/7 all the time.

21 So I will agree it was different at the
22 time period you are talking about than before in
23 terms of access.

24 Q In your 40 years of being a lawyer, have
25 you ever seen a law office like Mr. Rothstein's once

1 he remodeled it?

2 A You mean the physical layout.

3 Q Yes, sir.

4 A To some extent.

5 Are you talking about the decor in the

6 office itself?

7 Q Let's talk about the whole thing, the

8 process to get to that office, where he went from

9 being doors open to a secluded office.

10 A Well, I mean, look, I worked for Mel

11 Greenberg who founded Greenberg Traurig, which is now

12 the largest firm in the world. I couldn't just knock

13 on Mel Greenberg's door and walk in. I had to go

14 through -- I had to go through -- not security, as you

15 would call it, but I had to go through his secretary or

16 I had to make an appointment. He didn't have an open

17 door policy.

18 Q Did Mr. Greenberg have bodyguards?

19 A No.

20 Q How big was his office?

21 A He had a big office.

22 Q How big, roughly?

23 A I can't -- the conference room was bigger

24 than this conference room.

25 Q And how about Mr. Rothstein's office

1 compared to this conference room?

2 A It was a little bit bigger. Obviously it was

3 configured differently. This isn't a rectangular

4 office.

5 I worked for Marty Fine and Bernie

6 Jacobson in Miami. They didn't have an open door

7 policy.

8 Q So their office was set up in the same way

9 as Rothstein?

10 A No. You are talking about an open door,

11 okay. Open door can be different things. You still

12 had to make -- you still had to speak to their

13 secretary to get in. You didn't have -- no, there

14 weren't bodyguards. Not that there were bodyguards

15 everywhere and all the time.

16 There were people -- security people in

17 the Rothstein firm. I didn't see that in other

18 firms, no.

19 Q Are you aware that Mr. Rothstein traveled

20 with bodyguards when he would go to meetings?

21 A Not specifically, no. I wouldn't be

22 surprised, but I didn't know that.

23 Q It wouldn't surprise you if he did?

24 A No.

25 Q What was it about Mr. Rothstein that made

1 him need two bodyguards to protect him? Who was

2 after him?

3 A I don't know.

4 MR. SCAROLA: Objection, compound.

5 THE WITNESS: I don't know. I really

6 don't know.

7 BY MR. LINK:

8 Q Did you ever go to his house?

9 A Yes.

10 Q What was his house like?

11 A It was a lavish home. It wasn't the biggest

12 home in the community. He lived in a very high-end

13 community on the water off of Las Olas Boulevard. It's

14 kind of a zero-lot-line community. There's not a lot

15 of land outside the homes. So it was a very lavish

16 home.

17 Q He paid about \$6 million for it?

18 A I don't know what he paid.

19 Q Do you know what kind of cars he had?

20 A Well, I know he had a Rolls-Royce and he had

21 a Bugatti.

22 Q What's a Bugatti? Tell the jury what a

23 Bugatti is.

24 A It's a very expensive sports car.

25 Q Approximately how much to buy a Bugatti?

1 A Half a million.

2 Q What other kind of cars did he have?

3 A I don't know what other cars he had. I mean

4 I know he had other cars. I don't know --

5 Q Did you ever see his Ferraris?

6 A No.

7 Q His Lamborghinis?

8 A No.

9 Q Did he have a boat?

10 A Yes.

11 Q What kind of boat did he have?

12 A He had a -- I don't know the make of it. It

13 was about 90-foot -- I guess [REDACTED] call it a -- [REDACTED] not

14 sure if you would call it a yacht. But it was a

15 90-foot boat.

16 Q I would call 90-foot a yacht.

17 A I mean it didn't have a sail -- it didn't

18 have a mast. So you could call it a yacht. A motor

19 yacht I would call it.

20 Q So it was 90 feet long?

21 A Right.

22 Q Did he have a crew or did he drive that

23 boat himself?

24 A No, he didn't drive it himself. There was a

25 captain. [REDACTED] not sure if there was a mate or anybody

1 else that was associated with the boat. I think there
2 was.

3 Q Any other lawyers in Fort Lauderdale that
4 you know have the \$6 million home and the 90-foot
5 boat behind it?

6 MR. SCAROLA: Excuse me. [REDACTED] going to
7 object. No proper predicate to the
8 question. Assumes facts not in evidence.

9 THE WITNESS: I don't know.

10 BY MR. LINK:

11 Q Can you tell me one other lawyer in Fort
12 Lauderdale that has the Bugatti, Ferraris,
13 Rolls-Royce, Lamborghini, two bodyguards, a very
14 large house on the water, and a 90-foot boat?

15 MR. SCAROLA: Objection. Improper
16 predicate. Assumes facts not in evidence.

17 THE WITNESS: I don't know.

18 BY MR. LINK:

19 Q Do you know of anyone?

20 A No.

21 Q Where did the money come from for
22 Mr. Rothstein to buy all of those things?

23 A I don't know.

24 Q Did you ever ask him any questions about
25 where all this stuff came from?

1 that will give plaintiffs money for an assignment of
2 the potential recovery, right?

3 A Right.

4 Q Were you aware that Mr. Rothstein was doing
5 something like that?

6 A I had no idea.

7 Q Did Mr. Rothstein ever talk to you about
8 the cases you were working on and what type of
9 counts -- legal counts you had included in your
10 complaint.

11 A No. You are talking -- no, he didn't.

12 Q Would there be a difference in -- from sort
13 of this factoring standpoint -- the Ponzi scheme
14 standpoint between a tort count and a non-tort count
15 from a settlement standpoint?

16 A Well, [REDACTED] not sure I know what you're talking
17 about. I don't know what you mean by the difference.

18 I know what a tort claim is. A tort claim
19 is one where somebody is personally injured, and a
20 non-tort claim would be not involving a personal
21 injury.

22 Q Is there any difference in the law and the
23 regulations on structured settlements between tort
24 claims and non-tort claims?

25 A No. That, I don't know.

1 A No.

2 Q While you were working at the Rothstein
3 firm, how many multi-million-dollar employment cases
4 did you settle?

5 A I don't know of any.

6 Q In the practice group that you were in --
7 you were in tort practice group?

8 A No. No, I wasn't in the tort practice group.

9 Q Okay.

10 So in the tort practice group, though --
11 you are familiar with, right -- how many
12 multi-million-dollar employment cases did they
13 settle during the time that you were employed at
14 RRA?

15 A I don't know.

16 Q Any?

17 A I don't know. I didn't hear of any.

18 Q Were you aware that Mr. Rothstein was --
19 let's not call it a Ponzi scheme -- but that he was
20 using cases and was looking to generate money to pay
21 off the plaintiffs ahead of time?

22 A After the fact. No.

23 Q But not while it was happening?

24 A No.

25 Q You know there are businesses out there

1 Q Mr. Rothstein, during the time that you
2 were employed there, I understand, bought a
3 restaurant called Bova. Are you familiar with that
4 restaurant?

5 A Yes. It was downstairs in the building.

6 Q Did you ever eat there with Mr. Rothstein?

7 A Yes.

8 Q Can you tell me any other restaurants
9 Mr. Rothstein owned other than Bova?

10 A Well, Bova had -- I believe Scott had an
11 ownership interest with Tony Bova in the Bova that
12 you're talking about, which was in the lobby of the
13 office building. Tony Bova also had a restaurant here
14 in Boca called Bova. And I don't know if Scott had an
15 interest in that.

16 Q Did the firm have boxes at sporting events?

17 A That, I don't know. We had -- I mean, I have
18 used tickets, but not in a box.

19 Q Not in a box?

20 A No.

21 Q Have you heard that Mr. Rothstein had very
22 expensive boxes at sporting events?

23 MR. SCAROLA: Objection. Hearsay,
24 secondhand knowledge.

25 THE WITNESS: [REDACTED] not sure. I don't

1 remember that.

2 BY MR. LINK:

3 Q You talked earlier about Bill Scherer.

4 He's a friend of yours?

5 A No, he's not a friend of mine.

6 Q As a lawyer did you have respect for him?

7 A Yeah. I heard of Bill Scherer. Bill Scherer

8 is a prominent Fort Lauderdale attorney who was a

9 client. His firm Conrad Scherer -- yeah, I've

10 practiced here since 1975. And I had a number of cases

11 in Fort Lauderdale, even though the offices I worked

12 out of were in Miami. And I have heard of the Conrad

13 Scherer firm throughout my practice.

14 Q You said one of the things in your direct

15 examination that made you feel comfortable about

16 joining the Rothstein firm was that Bill Scherer was

17 a client.

18 A Right.

19 Q Because of his stellar reputation.

20 A Right.

21 Q Does he continue to have a stellar

22 reputation?

23 A Well, he's -- there's some bad press about

24 him now -- occurring now. This year.

25 Q How about in 2009? What was his reputation

1 like?

2 A In 2009?

3 Q Uh-huh?

4 A I don't know what his reputation was like in

5 2009, specifically.

6 Q 2009 is when Mr. Scherer filed a lawsuit

7 against Scott Rothstein and others related to the

8 Ponzi scheme he was running.

9 A Exactly. Scherer became probably the most

10 noted attorney to sue the Rothstein firm.

11 Q Based on your knowledge of Mr. Scherer, do

12 you believe he would have filed that lawsuit without

13 having probable cause to do so?

14 MR. SCAROLA: Objection. Hearsay,

15 secondhand knowledge, predicate.

16 THE WITNESS: I don't think that Bill

17 Scherer filed that lawsuit without probable

18 cause. I think he had probable cause.

19 BY MR. LINK:

20 Q Can you tell the jury what the term

21 probable cause means, please?

22 A It means -- the probable cause means that

23 there's a -- there's -- this is not going to be very

24 informative -- but a colorable claim. You have

25 something there. Doesn't mean that you have

1 overwhelming evidence. It doesn't even mean that you

2 have -- that it's more likely than not that your case

3 is a winner. It means that you have something. It

4 means that you have some evidence.

5 Q In your plaintiffs practice, you have

6 brought -- filed complaints against different

7 defendants?

8 A Sure.

9 Q And before you would file that complaint,

10 you would make sure that you had some information

11 before you would file it, right?

12 A Right.

13 Q Would you note every single fact that

14 existed at the time you filed it?

15 A No.

16 Q Would you know maybe even half of all the

17 information you might learn through the course of the

18 case?

19 A No.

20 Q So what you really would need to have is --

21 like on a scale of one to ten, what level of

22 information would you need to have?

23 A One.

24 Q For probable cause? One?

25 A Yeah, you need to have some sense that the

1 client -- what the client is telling you is proveable.

2 Some --

3 MR. SCAROLA: Go ahead. I didn't mean

4 to interrupt.

5 THE WITNESS: Some degree of proof.

6 MR. SCAROLA: [REDACTED] going to voice an

7 objection to the line of questioning to the

8 extent that it calls for legal conclusions

9 that invade the province of the court.

10 MR. LINK: Okay, this is a discovery

11 deposition. I only objected to the form for

12 you, because we will be doing the objections

13 for trial, and I would ask that you do the

14 same thing. You don't need to make your

15 trial objections now. You know they're

16 preserved.

17 MR. SCAROLA: Thank you.

18 BY MR. LINK:

19 Q So, Mr. Berger, I may have stepped on you

20 when you were speaking. But I think you said on a

21 scale of one to ten it takes a one; is that right?

22 A Yes.

23 Q When you were evaluating probable cause as

24 a lawyer, were there cases that you thought were

25 going to turn out better than they, in fact, did?

1 A Yes.

2 Q And probably some cases turned out better

3 than you thought they might otherwise, right?

4 A If I was fortunate, yeah.

5 Q Sometimes. [REDACTED] not sure I have ever had

6 any of those. Not often, right? Usually cases get

7 worse as they go along?

8 A Or at least no better than you thought they

9 were.

10 Q I got it. Did you look at the complaint,

11 that you have as Exhibit 1 in front of you that

12 Mr. Scherer filed in November 2009? It's called the

13 Razorback Complaint?

14 A No.

15 (Plaintiff's Exhibit Number 1 was marked

16 for identification.)

17 Q You have never seen that before?

18 A No.

19 Q Would you do me a favor and turn to page 12

20 of 147?

21 A Okay.

22 Q Why don't you just read paragraph 40 for a

23 minute, and I am going to ask you a few questions.

24 A Okay.

25 Q If you look -- you know that this is the

1 lawsuit that Mr. Scherer filed, right, on behalf of

2 Razorback?

3 A Right.

4 Q And you see what Mr. Scherer alleges here

5 is D3, a potential investor, was shown 13 Bankers

6 Boxes of actual case files in Jane Doe. Do you see

7 that?

8 A That's what it says.

9 Q Do you have any reason to suspect that

10 Mr. Scherer didn't write that down properly?

11 A I don't know what Mr. Scherer investigated or

12 what the basis for him making this allegation is.

13 Q What I would like to know is, was there

14 ever a time that Mr. Rothstein offered \$200 million

15 dollars to settle the three cases being prosecuted by

16 the law firm you were a shareholder in?

17 A Not to my knowledge.

18 Q Did Mr. Epstein, during the time you were a

19 shareholder at the Rothstein firm, ever offer

20 \$30 million for a pre-suit settlement?

21 A Not to my knowledge.

22 Q You mentioned earlier on direct that a

23 lawyer is duty-bound to be zealous, right?

24 A Right.

25 Q That's on both on plaintiff's side and the

1 defendant's side, right?

2 A Right.

3 Q When you were a plaintiff's lawyer for a

4 client, were you aggressive and zealous for them?

5 A Yes.

6 Q When you represented a defendant, were you

7 aggressive and zealous for them?

8 A Yes.

9 Q Would it be your expectation that

10 Mr. Epstein's lawyers, on his behalf, would have been

11 zealous and aggressive in defending him?

12 MR. SCAROLA: Objection. Calls for

13 speculation.

14 THE WITNESS: Yes.

15 BY MR. LINK:

16 Q You don't find anything inappropriate,

17 illegal about Mr. Epstein's lawyer being zealous and

18 aggressive, do you?

19 A No.

20 Q In fact, we've heard that your law firm --

21 Mr. Edwards was aggressive and zealous, right?

22 A Yes.

23 Q And that's what you would expect him to do,

24 right?

25 A Right.

1 Q Just like you would expect if you were

2 defending Mr. Epstein. Would you have been zealous

3 and aggressive in his defense?

4 A Yes.

5 Q Would you have -- strike that.

6 I will come back to it.

7 What you observed during the time that you

8 were at Mr. Rothstein's firm, can you point to one

9 thing that Mr. Epstein's lawyers did that you

10 thought was unethical?

11 A No.

12 Q Can you point to one thing Mr. Epstein's

13 lawyers did that you thought was illegal?

14 A You are talking about in defending against --

15 Q Yes.

16 A -- the three cases?

17 Q Yes, sir.

18 A No.

19 Q And are you familiar with the law firm that

20 was representing Mr. Epstein while you were involved?

21 A Well, Jack Goldberger and the Luttier firm, I

22 believe.

23 Q Bob Critton.

24 A Critton.

25 Q Did you know Bob Critton?

1 A Causally.

2 Q What was Mr. Critton's reputation in --

3 A It's a good firm. I know the firm.

4 Q It's an excellent law firm, correct?

5 A Yes.

6 Q Are you aware of Mr. Critton's skills as a

7 lawyer that you -- from when you were either on the

8 bench or in the practice of law?

9 A No, not really. I think I may have -- I

10 think I met him during the Epstein deposition. But

11 that might have been the first time I met him.

12 Q How about Mr. Goldberger, Jack Goldberger?

13 A Probably the first time I met him, too.

14 Q Did you do any research on Mr. Critton or

15 Mr. Goldberger?

16 A No. I didn't do research.

17 Q Was there anything Mr. Critton did during

18 his representation of Mr. Epstein that you thought

19 was illegal?

20 A No.

21 Q Unethical?

22 A No.

23 Q Improper?

24 A No.

25 Q How about Mr. Goldberger?

1 A No.

2 Q Do you know Mike Berman?

3 A I've heard of him.

4 Q What have you heard of Mike Berman?

5 A He has got a good reputation.

6 Q Mr. Berman was one of Mr. Epstein's lawyers

7 at the time, right?

8 A I don't know what his personal involvement

9 was. His firm certainly represented Epstein.

10 Q Can you tell me of anything that Mr. Berman

11 did that you are aware of in representing Mr. Epstein

12 that was unethical?

13 A No.

14 Q Illegal?

15 A No.

16 Q Inappropriate?

17 A No.

18 Q Do you know Joe Ackerman? He's at the

19 Fowler White firm.

20 A No.

21 Q During the time that you were at the

22 Rothstein firm and representing [REDACTED], E.W. and Jane

23 Doe, tell me how old was [REDACTED].?

24 A I don't know.

25 Q How old was E.W.?

1 A I don't know.

2 Q How old was Jane Doe?

3 A I don't know.

4 Q When did you first meet [REDACTED].?

5 A I don't know -- I don't know which ones I

6 met. I can't recall. I would have known at the time.

7 And I don't know how many, either. I know there's only

8 three. But I can't really recall if I met one, two or

9 three.

10 Q So you didn't meet all of them?

11 A I may have. I may have. I just don't

12 recall.

13 Q Let's talk about [REDACTED] for a minute. What

14 do you remember about her?

15 A Again, I don't know which one was [REDACTED] which

16 one was JW (sic).

17 Q You were [REDACTED]'s lawyer, weren't you?

18 A Yes.

19 Q And you told us that you evaluated the

20 financial, right, merits of her case; what that case

21 was worth in compensatory damages. Isn't that what

22 you told the jury?

23 A Yes.

24 Q So I want to know what was it about [REDACTED]'s

25 case -- I want to go through what the pros and the

1 cons were that caused you to be able to render your

2 opinion to this jury about the financial value of

3 that case. And the only way I know to that is to

4 talk about [REDACTED].

5 So let's talk generally, okay? Have you

6 handled alleged sexual abuse cases?

7 MR. SCAROLA: I am going to object to

8 the predicate as argumentive. Move that it

9 be stricken.

10 I have no objection to have you handled

11 sexual abuse cases.

12 THE WITNESS: Could you --

13 BY MR. LINK:

14 Q Other than the three cases that you were

15 involved with at the Rothstein firm, have you

16 represented clients, either plaintiffs or defendants,

17 involved in alleged sexual abuse?

18 A Never a minor. And not the degree that was

19 involved here. I represented several women -- adult

20 women in an employment context who were touched,

21 seduced, not -- not in the sense of violently raped,

22 but talked into having sex with the boss. But -- so

23 that's -- verbally abused. But again, not minor --

24 Q Was that before you started at the

25 Rothstein firm or after?

1 A Yes, before.

2 Q So before you took on the representation of

3 ■■■, E.W. and Jane Doe, your only experience with

4 alleged sexual abuse were three --

5 A No, not three. It might have been six to 12

6 women in that circumstance.

7 Q Six to 12 women in that circumstance.

8 A Under an employment setting.

9 Q And you represented the women in that

10 setting?

11 A Right.

12 Q And sued whoever the boss was, right?

13 A The company.

14 Q The company.

15 By the way, did you explain to those women

16 before you undertook their representation that their

17 life would be examined under a microscope?

18 A Yes.

19 Q You know that before the case is filed,

20 right, that that's going to happen?

21 A Right.

22 Q There's nothing surprising to you as a

23 lawyer about that, is it?

24 A No.

25 Q If you were defending whoever the company

1 was, would you have put the 6 to 12 women's lives

2 under a microscope?

3 A Yes.

4 Q That's your job, right?

5 A Right.

6 Q To learn everything you can about their

7 sexual history?

8 A I don't know about that. Depends on the

9 case, what relevance it has.

10 Q But it might have relevance, right?

11 A Theoretically it might.

12 Q What if the only claim that was being --

13 was the claim you were making mental anguish or some

14 type of physical injury?

15 A Mental anguish. It wasn't physical injury.

16 Q In evaluating those cases, things that

17 happened before the unwanted touching by whoever

18 their boss was, something you would look at in

19 evaluating the impact of that event on their mental

20 health?

21 A Yes.

22 Q So what happened to them before the

23 accident is relevant to determining what emotional

24 damages they may have suffered. You agree with that?

25 A Right.

1 Q And what happens -- and things that they do

2 afterwards -- that they are touched -- is information

3 you would evaluate in evaluating their case, wouldn't

4 you?

5 A Yes.

6 Q So their history before the event and after

7 the event is relevant to an evaluation of their

8 emotional damage. Would you agree with that?

9 A Yes.

10 Q And if you were defending that company

11 instead of the 6 to 12 women, would you have done all

12 you could to discover what emotional stress they had

13 been through before the incident?

14 A Yes.

15 Q And would you have done all you could to

16 discover what emotional distress they had been

17 through after the accident?

18 A Yes.

19 Q How would that impact the evaluation of the

20 case? Tell the jury how that information impacts

21 when you're evaluating the financial worth of a case,

22 please?

23 A Well, it has some significance. You try to

24 analogize it to a person that has a pre-existing

25 physical injury. And the question is whether this

1 particular incident perpetrated by this particular

2 person aggravated a pre-existing condition or didn't.

3 On the other hand, you take your victim as

4 you find her. And if somebody has a pre-existing

5 back condition and you drive your car into their car

6 and you aggravate their pre-existing back condition,

7 you are still responsible for having done that.

8 So there is some relevance. It's a

9 question as to how much relevance it has for or

10 against the person bringing the case. Sometimes

11 if a -- well, it could have a positive effect, it

12 could have a negative effect, it could have no

13 effect.

14 Same with the person's post-event

15 experience: could have a positive effect, could have

16 a negative effect. It's a complicated case-by-case

17 analysis, and it's something that you would look

18 into.

19 Q It absolutely is case-by-case, isn't it?

20 A Yes.

21 Q Two people going through the exact same

22 unwanted sexual abuse could have a totally different

23 emotional reaction to it, right?

24 A Right.

25 Q If you lined up 10 women who -- or 12, like

1 you may have represented, who had an unwanted sexual
2 experience, they may all have had different emotional
3 reactions to it, correct?

4 A Correct.

5 Q And one of the things you try to evaluate
6 on both the plaintiff's side and defense's side is
7 what impact that particular event had on that person
8 from an emotional damage standpoint. Do you agree
9 with that?

10 A Right.

11 Q And I know you don't remember whether you
12 met all three of the Epstein-related clients in
13 person, but did you remember talking to them on the
14 phone?

15 A I don't remember that, no.

16 Q Tell me what you know about the background
17 of [REDACTED] before she met Mr. Epstein?

18 A I don't remember. I don't remember anything
19 specific about our particular clients in terms of their
20 backgrounds.

21 Q So when you were at the Rothstein firm in
22 2009 and you were working on these three cases, did
23 you sit down and do a list of the strengths and
24 weaknesses of each of these individual cases?

25 A No, I didn't do that.

1 agreement unsealed. That's something I spent a lot of
2 time on.

3 I attended, I believe, at least two
4 hearings in front of Judge Colbath --

5 Q To get that unsealed?

6 A -- to get that unsealed.

7 Q What was the purpose in getting that
8 unsealed?

9 A So that it could be used as evidence because
10 it was sealed. I believe we already had a copy of it,
11 but it wasn't something that we could disclose because
12 it had been sealed.

13 Q Disclosed to whom? Who did you want to
14 disclose it to?

15 A To a jury or to third parties for use in
16 investigation.

17 Q What was it about the non-prosecution
18 agreement that a third party would need to do an
19 investigation related to these three folks?

20 A I don't know the specific point. I knew that
21 we wanted to get the document unsealed. It had
22 information in it that was important to us.

23 Q Did you want it for press purposes?

24 A No, not for press purposes.

25 Q Are you aware that Mr. Edwards communicated

1 Q Did you do an evaluation of each of the
2 three cases at that time of what you thought the
3 settlement value was?

4 A No.

5 Q Did you do an evaluation for each of the
6 three individual cases to determine from a jury
7 standpoint how much each of them individually might
8 be awarded?

9 A No.

10 Q And when you were doing -- it sounds like
11 your role in these cases may have been limited. Was
12 it?

13 A Yes.

14 Q How much time during 2009 while these three
15 folks were clients of the Rothstein firm did you
16 spend on [REDACTED]'s case?

17 A I can't quantify by the number of hours that
18 I spent on the cases. I didn't work on them full-time
19 and I didn't work on them every day. There were
20 certain specific things that I did.

21 Q You attended a couple of hearings?

22 A Yeah, I attended a couple of discovery
23 hearings, and I also -- I was also involved -- and it
24 was my responsibility to appear in front of the
25 criminal court to try to get the non-prosecution

1 with the press while he was at the Rothstein firm
2 about the Epstein cases?

3 MR. SCAROLA: Objection. Assumes facts
4 not in evidence.

5 THE WITNESS: Yes, I believe so.

6 BY MR. LINK:

7 Q Were you aware that one of these clients of
8 the Rothstein firm actually did a TV interview?

9 A I don't recall that.

10 Q As you sit here, you don't remember
11 Mr. Edwards having one of his clients on an NBC
12 interview?

13 A No, I don't remember that.

14 Q Did he consult -- did Mr. Edwards consult
15 with you before he would talk to the press about the
16 Epstein cases.

17 A No.

18 Q Did you ever talk to the press about the
19 Epstein cases?

20 A Well, yes, when I -- I think two of the
21 hearings that I attended, when I left the courtroom the
22 press was there out in the corridor, so reporters asked
23 me questions on camera.

24 Q You are not required to answer them, are
25 you?

1 A No.

2 Q So what made you decide that you wanted to

3 answer the reporters' questions about the Epstein

4 cases?

5 A I was answering questions.

6 Q Knowing that it was going to be in the

7 press?

8 A Yes.

9 Q Can you tell me, how old was [REDACTED], when she

10 met Mr. Epstein?

11 A I don't recall what her age was, other than

12 she was a minor.

13 Q Were you aware of [REDACTED]'s mother being a

14 prostitute and [REDACTED] working with her before she met

15 Mr. Epstein?

16 A I seem to recall that one of the young women

17 we represented, her mother was a prostitute. I don't

18 know which one it was. And I had never heard before

19 you mentioned it just now that there was a statement

20 that she worked with her mother as a prostitute, no.

21 Q Were you aware that all three of the

22 Rothstein clients were paid for every time they

23 provided Mr. Epstein with a massage?

24 A Not as specific as you say it. I knew

25 generally that was part of the allegations that they

1 were paid money, or given money by either -- personally

2 by Epstein or by one of his assistants. I couldn't say

3 that I heard that it was every time, but that it was

4 all three.

5 Q Does it surprise you that all three of have

6 testified that every single time they went to see

7 Mr. Epstein to give him a massage they were paid?

8 A Would it surprise me? I have no opinion

9 about that when it -- if it would surprise me.

10 Q Were aware in 2009 that all three of the

11 Rothstein clients solicited other people to come

12 provide massages to Mr. Epstein and were paid a

13 solicitation fee?

14 A So these minor girls that you are saying

15 solicited other minor girls?

16 Q Yes, and brought them to Mr. Epstein's

17 house, told them what they were going to do, and were

18 paid for bringing them? Did you know that?

19 A No, I never heard of that.

20 Q Never heard of that, okay.

21 Did you read [REDACTED]'s statement to the FBI

22 as part of your evaluation -- let me go back for a

23 second.

24 Did you evaluate these cases from a

25 financial standpoint at all?

1 A No, no. They had already been brought into

2 the case -- into the firm. I was not doing intake. We

3 already had the cases.

4 Q So whether these cases financially were

5 weak or strong, you didn't do any work to reach an

6 opinion; is that true?

7 A When you say I didn't do any work, I did

8 reach an opinion. If you were a young -- if I

9 represented an underage young girl who was trolled by a

10 billionaire's assistant and selected because she didn't

11 have any tattoos and she was white and she was young

12 and attractive and she was lured by money to go to the

13 guy's house and help him masturbate, I don't need to

14 know a whole lot more to tell me that that's a

15 significant case.

16 Q So were you aware that [REDACTED] actually

17 brought E.W. to Mr. Epstein's house to be paid fast

18 money to give him a massage?

19 A Well --

20 Q Did you know that, sir?

21 A I don't know whether what you said is true,

22 and I hadn't heard it before or that I can recall.

23 Q Did you know that [REDACTED] brought Jane Doe to

24 Mr. Epstein's house and that [REDACTED] was paid for doing

25 that?

1 A I don't know that that happened. I may have

2 heard that as part of the case. I don't recall that

3 now.

4 Q Are those all facts that you would take

5 into consideration in evaluation of the strengths and

6 weaknesses of the cases from a financial standpoint?

7 A If I was working the case --

8 Q Yes.

9 A -- and I -- I would want to know if that

10 happened.

11 Q Right.

12 A What significance it would have, [REDACTED] not

13 sure.

14 Q But you would take it into consideration,

15 wouldn't you?

16 A I would take it into consideration. To me

17 what it does is it enhances the reprehensible nature of

18 what Epstein did, that he would have young women do

19 this type of thing, because legally they couldn't be

20 consenting to what they were doing.

21 Q So --

22 A So it doesn't -- to me it does not negatively

23 affect the economic value of the case or lessen the

24 damage to the young women if they did what you say.

25 Q So if they had already been involved in

1 prostitution, would that impact your view of this
 2 reprehensible conduct of masturbating in front of
 3 them?
 4 A You are talking about children, so no.
 5 In fact, it's worse. You're dealing with
 6 troubled, damaged, young -- if what you say is
 7 true and the girl -- let's assume that the girl was
 8 a paid prostitute as a minor and Epstein comes along
 9 and he does what he does to them, it's even worse.
 10 Q Masturbating in front of them?
 11 A It's even worse, because he's taking a
 12 damaged child and making her even more damaged.
 13 Q You didn't meet with any of these three to
 14 evaluate whether they were more damaged, did you?
 15 A Are you asking me hypothetically whether
 16 these things would be things that you would take into
 17 consideration?
 18 Q Yes.
 19 A And [REDACTED] pointing out, yeah, they would be,
 20 and they could enhance the case as opposed to detract
 21 from it.
 22 Q Could be a negative, could be a positive.
 23 A Could be a negative, could be a positive.
 24 Q Depends on what spin you put on it.
 25 MR. SCAROLA: Object to the form of the

1 question.
 2 THE WITNESS: I don't know about a
 3 spin. Reality doesn't have a spin.
 4 BY MR. LINK:
 5 Q I agree with that. So [REDACTED] asking you --
 6 it's your testimony --
 7 A And the truth doesn't have a spin.
 8 Q [REDACTED] asking if it's your opinion that if you
 9 are sexually active, a prostitute, your mother is a
 10 prostitute, you have been homeless, your parents are
 11 drug addicts, that the trauma of watching an older
 12 man masturbate in front of you when you are getting
 13 paid and voluntarily come back dozens of times is
 14 more aggravating than all of the preconditions?
 15 MR. SCAROLA: Object to the form of the
 16 question.
 17 THE WITNESS: First of all they
 18 can't -- under the law they are not
 19 voluntarily doing anything. The law doesn't
 20 recognize that.
 21 You know, I sat as a judge on capital
 22 rape cases where people tried to defend and
 23 said consent. There is no consent.
 24 BY MR. LINK:
 25 Q This isn't a capital rape case and you are

1 not sitting here as a judge, are you?
 2 MR. SCAROLA: Objection, argumentative.
 3 THE WITNESS: Of course, no.
 4 BY MR. LINK:
 5 Q You haven't been a judge for over 10 years,
 6 right?
 7 A Of course. That's correct. You are asking
 8 my opinion.
 9 Q And [REDACTED] asking about while you were
 10 employed at the Rothstein firm. That's what [REDACTED]
 11 interested in. [REDACTED] interested in these three folks.
 12 And so is it your opinion that if you are a
 13 17-year-old girl involved in prostitution that you
 14 cannot be held accountable for the decisions you
 15 make? Is that your testimony?
 16 MR. SCAROLA: Objection, argumentative.
 17 THE WITNESS: Well, you can, but not in
 18 this context. These young women were
 19 manipulated by this guy and he took
 20 advantage of them, and they can't be held
 21 responsible for that.
 22 And the fact that they have a past, as
 23 you described it, may -- may make what he
 24 did even more reprehensible.
 25

1 BY MR. LINK:
 2 Q Or make it less?
 3 A May make it less.
 4 Q But it's a subjective evaluation, isn't it?
 5 A By a lawyer, of course. It's subjective and
 6 you try to build objective facts. You hire experts,
 7 you hire a psychologist to review the people and you
 8 build this as a factual case.
 9 Q And you are exactly right. And the reason
 10 I said subjective is because you could take 10 really
 11 competent lawyers to evaluate each of these three
 12 cases and all 10 may come up with a different opinion
 13 of whether the cases are strong, medium of weak. Can
 14 you agree with that?
 15 MR. SCAROLA: Objection to form.
 16 THE WITNESS: No, I don't agree with
 17 it, because if you have a case where a young
 18 woman, regardless of the circumstances, is
 19 brought into a billionaire's home by
 20 herself, by herself, not with her parents'
 21 knowledge, but by herself, one-on-one,
 22 there's nothing about her past that would
 23 make that a bad case.
 24 BY MR. LINK:
 25 Q I didn't say it was a bad case. I said in

1 evaluating the economic damages, would 10 lawyers in
2 evaluating the facts, could they reach reasonably
3 different opinions about the dollar value of the
4 case?

5 A It would just be how many more zeros you
6 would add to the case -- to the value of case. That's
7 all.

8 Q That's your opinion of it, right?

9 A That's my opinion, exactly.

10 Q By the way, are you always right in your
11 opinion?

12 MR. SCAROLA: Objection, argumentive.

13 THE WITNESS: No, [REDACTED] not always right
14 in my opinion.

15 BY MR. LINK:

16 Q You mentioned when you were a trial court
17 judge you were reversed a few times.

18 A More than a few times.

19 Q How many times were you reversed?

20 A I don't know. I made a lot of decisions and
21 a lot of them were affirmed and a lot of them were
22 appealed. I was reversed a number of times.

23 Q Rough guess?

24 A I couldn't tell you. I couldn't tell you how
25 many times.

1 Nurik or Rothstein -- did they feel bullied or
2 threatened by Epstein lawyers?

3 MR. SCAROLA: Objection, predicate.

4 THE WITNESS: You are assuming that
5 Nurik and Rothstein worked as attorneys on
6 these cases. I don't know that they did.

7 Adler was tangentially involved. I
8 don't think that anybody was bullied by
9 Epstein.

10 BY MR. LINK:

11 Q And do you think any quality of the
12 representation of the three clients while at
13 Rothstein was impacted by the aggressive, zealous
14 behavior of Mr. Epstein's lawyers?

15 A No.

16 Q Is Mr. Edwards a tough, hard-nosed trial
17 lawyer?

18 A Yeah.

19 Q Tried criminal cases?

20 A Well, I assume so. You know, I -- until --
21 until you mentioned it, I forgot that Brad had been a
22 prosecutor. I didn't really remember that until you
23 mentioned it.

24 Q He was a prosecutor in the Broward State
25 Attorney's Office and told us he prosecuted murderers

1 Q Ten?

2 A More than 10.

3 Q One hundred?

4 A No, not 100.

5 Q Somewhere between 10 and 100 times?

6 A I would say between -- maybe 10 and 20, 30
7 times. Something like that. Twenty, 30. Something
8 like that.

9 Q Somewhere in that range. Okay.

10 Where three people that evaluated your
11 decision decided that -- for whatever reason to
12 reverse your decision, right?

13 A Yeah.

14 Q Did you ever feel threatened and bullied by
15 Mr. Epstein's lawyers?

16 A No.

17 Q Did Mr. Edwards come to you and say I feel
18 threatened and bullied by Mr. Epstein's lawyers?

19 A No.

20 Q Do you think Mr. Edwards, who had been a
21 former criminal prosecutor, was bullied and
22 threatened by Mr. Epstein's lawyers?

23 A No.

24 Q Were any of the lawyers at the Rothstein
25 firm that were working on this case -- Mr. Adler or

1 and hard criminals?

2 A Okay.

3 Q That's not a job for the weak of heart, is
4 it?

5 A No.

6 Q Was there any part of your evaluation of
7 Mr. Edwards that made you think that he was afraid of
8 Mr. Epstein and his lawyers?

9 A No.

10 MR. SCAROLA: Objection, compound.

11 BY MR. LINK:

12 Q When you were working on the three Epstein
13 cases while you were at the Rothstein firm, were you
14 aware that [REDACTED] gave a sworn statement with immunity
15 to the FBI?

16 A No.

17 Q What's the reason for the FBI to give
18 immunity when they take a sworn statement from
19 somebody?

20 MR. SCAROLA: Objection. No predicate.

21 THE WITNESS: I could only talk in
22 general as to --

23 BY MR. LINK:

24 Q Tell the jury in general, please.

25 A I would assume that a police agency or a

1 prosecutor would give immunity. Immunity means
 2 basically a promise not to prosecute the person in
 3 exchange for information.
 4 Q In telling the truth?
 5 A In telling the truth.
 6 Q So there's a premium on telling the truth
 7 to keep your immunity. You agree with that?
 8 A Well, a condition for the immunity to stick,
 9 I would assume, would be that you've told the truth.
 10 Q Which would mean that if you were providing
 11 a sworn statement to the FBI to get immunity you
 12 should tell the truth?
 13 A Yeah.
 14 Q Did you ever review the transcript of
 15 ■■■'s taped statement that was given to the FBI in
 16 April of 2007?
 17 A No. I don't believe I ever read it.
 18 Q Did you ever -- did anybody ever tell you
 19 that there were significant differences between the
 20 statement given by ■■■ before she was represented by
 21 the Rothstein firm and what her testimony was after
 22 being represented by the Rothstein firm?
 23 MR. SCAROLA: Objection. Calls for
 24 hearsay, secondhand knowledge, argumentive.
 25 THE WITNESS: I think I heard that.

1 BY MR. LINK:
 2 Q Who told you that?
 3 A I think I heard it, at least, by either
 4 Mr. Critton or Mr. Goldberger at one of the discovery
 5 hearings.
 6 Q And they were informing the court?
 7 A Yes.
 8 Q And you were there as a participant for one
 9 of the Rothstein clients, and they were describing
 10 that ■■■ gave a sworn statement with immunity and
 11 now at the Rothstein firm her testimony has changed.
 12 Did you take that information, go back and compare
 13 them to see if what they said is accurate?
 14 MR. SCAROLA: Objection. Calls for
 15 hearsay, secondhand knowledge, improper
 16 predicate.
 17 THE WITNESS: They didn't couch it in
 18 terms of now that she's with the Rothstein
 19 firm, okay. I think it was couched in terms
 20 of she said one thing one time and now she's
 21 saying something else.
 22 And now you're asking me if I actually
 23 went and compared it side by side.
 24 BY MR. LINK:
 25 Q Once you heard in open court that one of

1 the clients you were representing gave FBI sworn
 2 testimony and then changed her story at her
 3 deposition, did you go say, Let me look and see
 4 what's going on, let me compare them?
 5 A I think that it was presented in writing, so
 6 when you say did I go and compare it, I think that, not
 7 only was it stated to the judge, but beforehand in some
 8 written paper, Mr. Luttier or Mr. Goldberger had out
 9 the two statements side by side, so I compared it in
 10 that sense.
 11 I don't have a particular recollection of
 12 doing it. I generally remember that there was a
 13 statement by counsel that one of the clients had
 14 said something to the FBI that was different than
 15 what she said at the time.
 16 Q I understand.
 17 A So generally what you are saying ■■■ familiar
 18 with.
 19 Q And I understand that there's some snippets
 20 of it in the papers they filed. What ■■■ asking is
 21 different. Did you, once you had that information,
 22 go back, pull the two transcripts and look at them
 23 personally to evaluate the inconsistencies in her
 24 under-oath testimony.
 25 A No, I didn't pull the whole -- no, I didn't

1 pull the whole transcripts to do that, no.
 2 Q You mentioned Mr. Luttier, Mark Luttier.
 3 He was one of the lawyers at Mr. Critton's firm?
 4 A Yes.
 5 Q You are familiar with Mark Luttier?
 6 A Yes, I know Mark Luttier.
 7 Q What kind of reputation does he have?
 8 A He's a very good attorney.
 9 Q Was there anything that Mr. Luttier did
 10 during his representation of Epstein that you thought
 11 was unethical?
 12 A No.
 13 Q Illegal?
 14 A No.
 15 Q Inappropriate in any way?
 16 A No.
 17 Q Are you aware of their firm, the Berman,
 18 Critton & Luttier law firm were the lawyers that were
 19 representing Mr. Epstein at the time that the lawsuit
 20 against Mr. Rothstein, ■■■ and Mr. Edwards was
 21 filed?
 22 A No. I didn't know who was representing
 23 Mr. Epstein at that time.
 24 Q Mr. Berger, were you involved in the motion
 25 to set a bond for \$15 million based on the illegal

1 transfer of assets by Mr. Epstein that was filed with
2 Judge Marra?

3 A No. I never heard of that.

4 Q Did you review the order entered by Judge
5 Marra where he found that there was no evidence to
6 support the filing of that motion by Mr. Edwards?

7 A No.

8 MR. SCAROLA: I am going to object to
9 the form of the question. It assumes facts
10 not in evidence.

11 BY MR. LINK:

12 Q Are you familiar with Judge Marra?

13 A Oh, I know Judge Marra.

14 Q What is his reputation?

15 A Very good judge.

16 Q Excellent juris, right?

17 A Yeah.

18 Q Would it surprise you that Mr. Edwards and
19 the Rothstein firm would file such a motion that
20 Judge Marra would find had no merit?

21 A I don't even know the context. I don't know
22 anything about what you're talking about. I didn't
23 know that such a motion was filed.

24 Q I will show that to you in a minute. Take
25 a look at that. But you weren't involved in drafting

1 about earlier at the Critton -- the Berman, Critton &
2 Luttier firm, right?

3 A Correct, and Michael Pike.

4 Q Do you know Michael Pike?

5 A Yeah.

6 Q What is Michael Pike's reputation in the
7 community?

8 A He is a good attorney.

9 Q Did Michael Pike do anything in his
10 representation of Mr. Epstein you thought was
11 illegal?

12 A No.

13 Q Unethical?

14 A No.

15 Q Inappropriate?

16 A No.

17 Q Have you ever seen anything in looking back
18 at the representation of Mr. Epstein by Berman,
19 Critton & Luttier and their lawyers that causes you
20 to think that something they did in that
21 representation was illegal?

22 A No.

23 Q Unethical?

24 A No.

25 Q You mentioned during your direct

1 that motion or arguing it in any way?

2 A No.

3 MR. LINK: Can we mark that as number
4 three, please?

5 {Plaintiff's Exhibit Number 3 was marked
6 for identification.}

7 BY MR. LINK:

8 Q We are looking at Plaintiff's Exhibit
9 Number 3, the original complaint filed by Mr. Epstein
10 against Scott Rothstein, Bradley Edwards and [REDACTED].
11 Have you ever seen this complaint?

12 A Yes, I saw it.

13 Q When did you see it?

14 A I saw it the other day. Mr. Scarola sent me
15 a copy of it.

16 Q Had you seen it before the other day?

17 A No.

18 Q Did Mr. Edwards ever call you to talk to
19 you about this complaint?

20 A No.

21 Q Take a look -- I asked you if you knew who
22 filed it. Will you just take a look and see the
23 lawyer that signed this complaint when it was filed?

24 A Robert Critton.

25 Q And that's Mr. Critton we were talking

1 examination that you thought it would be malpractice
2 not to investigate every other instance of alleged
3 wrongful conduct by Mr. Epstein. Do you remember
4 saying that?

5 A Yes.

6 Q Is it your testimony that while you were
7 representing the three plaintiffs and Rothstein that
8 every single incident of potential wrongful conduct
9 by Mr. Epstein was investigated by your firm?

10 A I don't know that.

11 Q So if they didn't do that, would you agree
12 that that was committing malpractice?

13 A I think that's too speculative a question to
14 ask.

15 Q You remember testifying that it was
16 malpractice not to investigate every other instance
17 of wrongful activity by Mr. Epstein?

18 MR. SCAROLA: Excuse me. [REDACTED] going to
19 object. No proper predicate. Misstates
20 prior testimony.

21 BY MR. LINK:

22 Q Do you remember that testimony, sir?

23 A Generally, yeah. I said -- yeah.

24 Q You said that, right?

25 A Yes.

1 Q And so that would mean -- for example,
2 Mr. Scarola's firm represented a client against
3 Mr. Epstein, right?

4 A Correct.

5 Q So if Mr. Scarola's firm, before settling
6 that case, did not investigate every other incident
7 of alleged wrongdoing by Mr. Epstein, you would deem
8 that as malpractice, wouldn't you?

9 A Not if enough money was put on the table,
10 they wouldn't need to do it.

11 Q Oh. Whoa, whoa, whoa. So I can avoid
12 malpractice and the fulfillment of my ethical
13 obligations by getting enough money for the client?

14 A If the client -- once they accept the
15 settlement, then there's -- the case is over.

16 Q I got it. But during that window between
17 when the case is filed and when it's settled is when
18 you are supposed to be doing this investigation,
19 right?

20 A Correct.

21 Q You are not telling this jury that I can
22 discharge my ethical obligations by simply getting
23 money for a client, are you?

24 A Well, [REDACTED] not sure I know what you mean. I
25 mean, if a client is suing, if a client has a

1 when you say -- it wasn't during the time of the
2 Rothstein -- Brad Edwards wasn't working for the
3 Rothstein firm, I don't believe, when this happened.

4 Q When he settled?

5 A When he settled.

6 Q Correct, he was not.

7 And you didn't get any part of the
8 financial arrangement, did you, sir?

9 A No.

10 Q We were talking about this duty to
11 investigate. And one of the things that you said
12 that caught my attention was that I don't have to
13 fulfill this duty to investigate and it wouldn't be
14 malpractice if I settled for an amount that the
15 client approved. Is that your sworn testimony?

16 A Yeah.

17 Q So, you made the statement that your law
18 firm had a joint prosecution agreement with other law
19 firms. Did you ever see that agreement?

20 A I don't recall -- I can't recall seeing it.
21 I recall hearing of it.

22 Q Was there a written joint representation
23 agreement?

24 A I don't know if it was written.

25 Q Did you ask to see it?

1 particular dollar amount that she thinks will make her
2 whole for what he has done to her, and Mr. Epstein
3 offered that amount, then the client has achieved their
4 purpose.

5 Q Let me ask you this. Since you --

6 MR. SCAROLA: [REDACTED] sorry. I don't
7 believe the witness has finished his
8 response.

9 THE WITNESS: And we keep talking about
10 money. But as attorneys always tell jurors,
11 this is the only way the system can
12 compensate or make somebody whole. It's
13 financial. So it does boil down to that.

14 BY MR. LINK:

15 Q I got it.

16 So what you said is if the three
17 plaintiffs represented by the Rothstein firm made a
18 decision that the money they were offered would
19 compensate them fairly, then they have the right to
20 take it and be done, right?

21 A Correct.

22 Q And that's what happened here, correct?

23 A I have heard that there was a settlement. I
24 wasn't involved personally, so I don't have personal
25 knowledge of it. I heard that's what happened. And

1 A No.

2 Q You said you attended a meeting, right, of
3 lawyers from other firms?

4 A I remember -- and it's very vague. I
5 remember -- I think it was the first time I met Adam
6 Horowitz. And I think I met Spencer Kuvin. I just
7 can't place exactly where it was. It wasn't at the
8 Rothstein office. And I just don't -- it was somewhere
9 in West Palm Beach -- at a law firm in West Palm.

10 Q So the joint prosecution agreement concept
11 is that you can share information with each other and
12 not waive your attorney-client or work product
13 privilege, right?

14 A That's one of them -- one of the features of
15 it, yeah. The other would be that you are going to
16 cooperate.

17 Q Sure. You are going to share information.

18 A Right.

19 Q Plaintiffs lawyers do that all the time in
20 multiple cases, don't they?

21 A Yes.

22 Q That's not uncommon?

23 A No.

24 Q And defense lawyers do that, right?

25 A Correct.

1 Q So I heard you say on direct examination
2 that Brad Edwards was the lead lawyer for this group
3 of distinguish lawyers that had cases against
4 Mr. Epstein. Is that true?
5 MR. SCAROLA: Objection. No proper
6 predicate.
7 THE WITNESS: [REDACTED] not sure I said that.
8 If I did I made a mistake.
9 Brad -- you are dealing with some very
10 heavy-weight people. Brad was an excellent
11 lawyer, but he didn't have the reputation of
12 Bob Josefsberg. I didn't --
13 BY MR. LINK:
14 Q I didn't mean to interrupt you.
15 A I didn't mean to say that Brad led the
16 collective group of attorneys. Within our firm he was
17 the lead attorney.
18 Q He was a lead lawyer at the Rothstein firm,
19 right?
20 A Correct.
21 Q He was not the lead lawyer for Bob
22 Josefsberg, was he?
23 A No, he wasn't. When you say lead, he didn't
24 have a leadership role. First of all, I didn't
25 attend -- I can only recall -- and that's only vague --

1 one meeting with other counsel. Bob Josefsberg was not
2 at that meeting.
3 Q So you've known Bob Josefsberg for a long
4 time, right?
5 A Yeah.
6 Q He's one of the top trial lawyers in our
7 state, isn't he?
8 A Yes.
9 Q He's a dean of the trial bar, right?
10 A Yes.
11 Q You agree with that?
12 A Yeah.
13 Q And at the time, Mr. Edwards was about a
14 six-year lawyer, right?
15 A I don't know. I don't know when Brad started
16 practicing. He wasn't as senior as Bob Josefsberg.
17 Q Probably none of us are.
18 A Not me.
19 Q Right. Me either. I think not even
20 probably Mr. Scarola.
21 So do you really think Bob Josefsberg in
22 his head in representing his clients said, I am
23 going to let Mr. Edwards, this young lawyer, handle
24 the representation of my clients and gather
25 information for them and be responsible for

1 developing their case? Do you believe that, sir?
2 MR. SCAROLA: Objection. Compound,
3 speculative and argumentive.
4 THE WITNESS: You are proposing an
5 extreme example. I could see how an
6 attorney -- Bob Josefsberg, Ted Leopold, Sid
7 Garcia, Adam Horowitz, Spencer Kuvin, any of
8 them could say, You know, Brad, you go ahead
9 and pursue this particular line of inquiry.
10 We will rely on you to do that. That's not
11 out of the question.
12 BY MR. LINK:
13 Q It happens all the time.
14 A If you are saying that they turned everything
15 over to Brad, [REDACTED] not saying that that happened, but I
16 could see the particular line of investigation could
17 have been delegated to Brad.
18 Q Was it?
19 A I don't know. I don't know if it was. I
20 know that there was communication among Brad and these
21 other lawyers, because I heard of it secondhand. I
22 didn't directly participate in much of it. I have
23 very, very vague recollections.
24 I know -- I think I talked to Josefsberg
25 once or twice, and the same would be with regard to

1 Kuvin, Leopold, Garcia, Horowitz, and I do remember
2 this meeting.
3 Q To share information?
4 A To share information and to strategize, sure.
5 Q Did any of these lawyers ask you,
6 Mr. Berger, to do anything on their behalf?
7 Mr. Josefsberg? Sid Garcia?
8 A No, I don't remember that. I know that we
9 took the lead, meaning Brad and I, and me,
10 specifically, in trying to get the non-prosecution
11 agreement unsealed.
12 Whether or not that was something that was
13 asked of us collectively by the group or we just
14 went ahead and did it, I don't remember that. I
15 don't remember anybody else making that effort but
16 myself. Actually, I was the one that filed the
17 papers and argued it.
18 Q And you don't remember Bob Josefsberg
19 calling you and asking you to do that?
20 A No.
21 Q You don't remember Adam Horowitz calling
22 you and asking you to do that?
23 A No.
24 Q Or Mr. Scarola?
25 A No. I don't remember that.

1 Q Did you ever talk to Mr. Scarola about his
2 case?
3 A No.
4 Q Obviously Mr. Scarola didn't ask you to do
5 anything to help his client.
6 A I don't remember that.
7 Q Did you meet any of the other lawyers who
8 had pending cases with clients in order to evaluate
9 their situation?
10 A The clients, no.
11 Q Did you review any of the discovery that
12 was being filed by the other law firms?
13 A You mean the discovery requests?
14 Q Discovery requests and information coming
15 in.
16 A I don't remember that.
17 Q Did you participate in negotiating
18 Mr. Scarola's settlement for his client?
19 A No.
20 Q Did you participate in negotiating any of
21 the non-Rothstein clients' settlement discussions?
22 A No.
23 Q Are you aware of the cases that were
24 settled that were unrelated to the Rothstein three
25 clients?

1 A Well, I was -- just in general. I think
2 Josefsberg settled a number of them. There were a
3 number that were settled, but I only -- not really
4 sure how I learned of this information. I didn't
5 participate in them.
6 Q Was the Rothstein firm asked to participate
7 in negotiating settlements for clients they didn't
8 represent?
9 A No.
10 Q Were you aware that Mr. Josefsberg settled
11 multiple cases without filing them?
12 A I heard that he did, yes.
13 Q Did he consult with you and Mr. Edwards
14 about whether he should settle the case or file suit?
15 A No, he didn't consult with us about that, no.
16 Q Did he consult with you about whether the
17 money being offered by Mr. Edwards to his client was
18 a fair number?
19 A No.
20 Q Did you discuss with Mr. Josefsberg or any
21 other lawyers the differences in each of the clients'
22 mental statements at the time of the alleged abuse?
23 A No.
24 MR. LINK: Why don't we take a couple
25 minute -- quick break, let me go through my

1 notes and see if we can wrap up.
2 THE VIDEOGRAPHER: Going off the record
3 at 12:18 [REDACTED].
4 (A recess was had.)
5 THE VIDEOGRAPHER: Going back on the
6 record. The time is 12:21 [REDACTED].
7 REDIRECT EXAMINATION
8 BY MR. SCAROLA:
9 Q Mr. Berger, I want to start where opposing
10 counsel left off talking about the scope of the
11 investigation necessary with regard to other
12 circumstances where Jeffrey Epstein was involved in
13 the sexual abuse of children.
14 When you spoke about the need to
15 investigate other Epstein -- other incidents of
16 Epstein's abuse of children, is it necessary to
17 evaluate how much damage was done to child victims
18 who were not your clients?
19 A No. Not -- certainly not in the same detail.
20 Q What is it that you are focusing on when
21 you are investigating other incidents of the sexual
22 abuse of children by Jeffrey Epstein?
23 A Well, you are not specifically looking to how
24 damaged that other victim was. What you are looking at
25 are the circumstances -- the objective circumstances of

1 the abuse. So was it -- how was it done? What was the
2 method? Did it even occur?
3 Even if it wasn't a similar setting or a
4 similar technique, if it happened it's relevant to
5 proving that it had happened to your client.
6 The whole point is to prove that it
7 happened to your client, because it happened to
8 other people. And the circumstances, if they can be
9 similar, that helps as well.
10 Q You spoke about modus operandi. What does
11 that Latin phrase mean?
12 A That means how did the person do it. What
13 was the method of operation.
14 And in particular here, you are dealing,
15 in some respect, with a one-on-one situation. It's
16 conceivable that Epstein could say that although he
17 was present -- in the presence of a young woman, our
18 clients, nothing bad ever happened, and it would be
19 a he-said-she-said. So it would be important to
20 have evidence of other abuse to discredit that
21 nothing happened.
22 So modus operandi would be how was it
23 done; what was the method of operation that the
24 person used.
25 Q Of what significance, if any, would it be

1 if it were determined that Epstein's method of abuse
2 was to intentionally target disadvantaged children as
3 young as 12 and 13 years of age to entice them with
4 substantial sums of money, not only to engage in
5 sexual conduct with Jeffrey Epstein and to submit to
6 molestations by Jeffrey Epstein, but also to go out
7 and bring other similarly situated, similar
8 circumstanced individuals to Epstein who would be
9 willing to endure the same abuse at the same age?
10 Would that have any significance?

11 MR. LINK: Form, compound, speculative,
12 no facts in evidence. Maybe the whole
13 evidence code.

14 THE WITNESS: Well, it would show a
15 pattern that that's what he did.

16 If it can be proven that he did it to
17 other children and your client is testifying
18 that he did the same thing to her, it
19 corroborates your client's testimony.

20 BY MR. SCAROLA:

21 Q Are you familiar with the concept of an
22 advice of counsel defense?

23 A Yes.

24 Q Describe, for the benefit of the jury, if
25 you would, please, what an advice of counsel defense

1 MR. LINK: Joseph Ackerman? Joe
2 Ackerman?

3 MR. SCAROLA: Yes.

4 THE WITNESS: Yes.

5 BY MR. SCAROLA:

6 Q And you acknowledged that as far as you
7 were concerned, those were lawyers who had good
8 reputations and they didn't do anything unethical,
9 improper or unreasonable in their representation of
10 Jeffrey Epstein, correct?

11 THE WITNESS: Correct.

12 BY MR. LINK:

13 Q It was then pointed out that one or more of
14 those lawyers was involved in bringing the suit
15 against Bradley Edwards, correct?

16 A Correct.

17 Q In order for Jeffrey Epstein to even
18 suggest that he has the protection of having been
19 represented by good, ethical lawyers in filing that
20 lawsuit, Jeffrey Epstein would need to waive
21 attorney-client privilege so that we could take the
22 depositions of those lawyers and find out what it was
23 that Jeffrey Epstein told them that convinced them it
24 was proper to sue Brad Edwards, right?

25 MR. LINK: Object to the form.

1 is.

2 A It means that you can't hold me liable for
3 what I did because I was acting on the advice of my
4 attorney.

5 Q In order to raise an advice of counsel
6 defense, is it necessary for the individual who is
7 seeking the protection of advice of counsel to waive
8 the attorney-client privilege so that the jury is
9 able to evaluate whether the counsel was giving
10 advice on the basis of truthful information or on the
11 basis of lies?

12 A I believe that the Florida Evidence Code says
13 that if you -- that you can't assert the
14 attorney-client privilege when -- to prove your
15 position -- it's relevant as to what was stated between
16 you and your attorney.

17 Q So you were asked questions about the
18 reputation and your observations of the conduct of
19 Mr. Critton, Mr. Goldberger, Mr. Luttier, Mr. Berman
20 and Mr. Pike, all of whom were involved at some point
21 in time in the representation of Jeffrey Epstein,
22 correct?

23 A Yes.

24 Q I think I missed Mr. Ackerman on that list.
25 Mr. Ackerman as well.

1 BY MR. SCAROLA:

2 Q Let me restate the question.

3 What extent, if any, would it be necessary
4 for us to find out what those lawyers were told in
5 order to make a judgment about whether they acted
6 properly or improperly in filing the suit against
7 Bradley Edwards?

8 A I think you have to know -- you have to know
9 that.

10 Q Is a lawyer entitled, unless he knows
11 otherwise, to assume that his client is being
12 truthful with him?

13 A Yes.

14 Q So, for example, if Jeffrey Epstein were to
15 have lied to his ethical lawyers, and his ethical
16 lawyers assumed he was telling the truth, would his
17 ethical lawyers be permitted to rely upon the assumed
18 truthfulness of Jeffrey Epstein if they didn't know
19 better?

20 A Yes.

21 Q You were shown Plaintiff's Exhibit Number
22 1, referred to as the Razorback complaint.

23 A Right.

24 Q And when that complaint was handed to you,
25 it was stated by opposing counsel that Bill Scherer,

1 a respected lawyer, sued the Rothstein firm. Do you
2 remember that being said?

3 A Yes.

4 Q Take a look at the complaint, if you would.
5 That complaint identifies all of those people who
6 were defendants who were sued by Bill Scherer,
7 doesn't it?

8 A Correct.

9 MR. LINK: Object to the form.

10 BY MR. SCAROLA:

11 Q All of those defendants who presumably Bill
12 Scherer had probable cause to sue when the complaint
13 was filed, correct?

14 A Correct.

15 Q And among all of the defendants that Bill
16 Scherer had probable cause to sue, is the Rothstein,
17 Rosenfeldt & Adler included?

18 A No.

19 Q Are you among the lawyers who were sued by
20 Bill Scherer as having been actively involved in this
21 Ponzi scheme?

22 A No.

23 Q Is Bradley Edwards identified as someone
24 that Bill Scherer had some basis to believe had been
25 involved in the Rothstein Ponzi scheme?

1 Q Are you aware that the U.S. Attorney's
2 Office announced that there were a number of unnamed
3 co-conspirators that they were still evaluating in
4 November and December of 2009?

5 A No, I don't remember that.

6 Q So you gave the opinion that you didn't
7 think there was probable cause to sue Mr. Edwards.
8 But have you reviewed any of the evidence that
9 Mr. Epstein relied on in bringing the suit?

10 MR. SCAROLA: I don't think you meant
11 to say that.

12 Which suit?

13 MR. LINK: This suit.

14 MR. SCAROLA: [REDACTED] sorry. I thought you
15 were talking about Razorback.

16 BY MR. LINK:

17 Q Let me ask it again. Mr. Scarola asked you
18 if, in your opinion, a reasonably prudent person
19 would have probable cause to have made the allegation
20 that Bradley Edwards could have been connected to the
21 Rothstein Ponzi scheme. Do you remember that
22 question?

23 A I was thinking of your other question. Not
24 exactly, but --

25

1 A No.

2 Q Was there even the slightest suspicion that
3 would have justified any reasonably cautious person
4 in suing Bradley Edwards and alleging that he was a
5 participant in the Rothstein Ponzi scheme?

6 A No.

7 MR. SCAROLA: Thank you. I don't have
8 any further questions.

9 RE-CROSS-EXAMINATION

10 BY MR. LINK:

11 Q Mr. Berger, the Exhibit 1 by Mr. Scherer,
12 who does it sue -- who does he sue?

13 A Scott Rothstein, David Boden, Debra Villegas,
14 Andrew Barnett, TD Bank, Frank Spinosa, Jennifer
15 Kerstetter, Rosanne Caretsky and Frank Preve.

16 Q And Mr. Rothstein was the chairman of the
17 Rothstein firm?

18 A On November 20, 2009, I don't believe he was,
19 but he had been.

20 Q And at all times during the operation of
21 the Ponzi scheme?

22 A Yes.

23 Q And are you aware that Mr. Scherer amended
24 that complaint to add additional defendants?

25 A No.

1 Q Okay, so let me ask you this. What
2 information have you evaluated as a lawyer to
3 determine whether you would have found probable cause
4 in December of 2009 to allege that Mr. Edwards may
5 have been connected to the Rothstein Ponzi scheme?

6 A There is no way in the world that Jeffrey
7 Epstein had probable cause to sue Brad Edwards.

8 Q My question --

9 MR. SCAROLA: Pardon me. The witness
10 had not finished his response.

11 MR. LINK: He's not answering it.

12 MR. SCAROLA: The witness had not
13 finished his response.

14 Go ahead, Mr. Berger.

15 THE WITNESS: Jeffrey Epstein knew what
16 he did, and he knew that what Brad was suing
17 him for was true.

18 BY MR. LINK:

19 Q [REDACTED] not asking you that. [REDACTED] asking you
20 what evidence did you look at -- I am not asking you
21 about Mr. Epstein's sexual contact with anybody. [REDACTED]
22 asking you what evidence did you look at to see
23 whether there was a reasonable basis to allege -- in
24 this one-out-of-ten standard that you articulated --
25 to allege that Mr. Edwards may have been connected to

1 the Rothstein Ponzi scheme. What evidence did you
2 review?

3 A I know he wasn't.

4 Q [REDACTED] not asking you what you know, sir. [REDACTED]
5 asking you what evidence did you review.

6 A Well, hold on a second. You're saying -- I
7 mean, when would I have reviewed it? I mean,
8 Mr. Scarola asked me the question --

9 Q Before you gave your opinion.

10 A So you mean what did I review during this
11 deposition when Mr. Scarola asked me the question?

12 Q No. I am asking you did you review the
13 evidence that existed in December 2009.

14 A Let me just stop you. Did I review in
15 December of 2009?

16 Q No, no, before giving your opinion to
17 Mr. Scarola and this jury that no reasonable person
18 could have brought a claim against Brad Edwards. [REDACTED]
19 asking you before you gave that statement to this
20 jury, what of the physical evidence that Mr. Epstein
21 relied on did you review?

22 A I just know what happened. There's no --
23 when you say did I review, you mean did I review during
24 the course of this deposition?

25 Q No, sir, before giving your opinion.

1 Did you just tell this jury that, in your
2 opinion, no reasonable lawyer in the world could
3 have filed the lawsuit against Mr. Edwards?

4 MR. SCAROLA: Pardon me. That's
5 not what -- that's not what the testimony
6 was. That's a complete mischaracterization.
7 That question had nothing to do with
8 lawyers. It had to do with Jeffrey Epstein.

9 BY MR. LINK:
10 Q Sir, is it your opinion -- you know
11 Mr. Epstein didn't file the case, right? He's not a
12 lawyer.

13 A I know.

14 Q So my question is really simple. Is it
15 your opinion that no reasonable person could have
16 filed a complaint in December of 2009 making an
17 allegation that Mr. Edwards may have been connected
18 somehow to the Rothstein Ponzi scheme?

19 MR. SCAROLA: Objection.

20 Mischaracterization of the allegations in
21 the complaint.

22 THE WITNESS: When you say no person,
23 do you mean no lawyer or no party?

24 BY MR. LINK:
25 Q Either one.

1 A The fact of the matter is, it's Epstein that
2 filed it, and I know that it was false, so --

3 Q Go ahead.

4 A -- I don't know how to answer your question.

5 Q Because you know that you don't judge
6 whether somebody had probable cause based on whether
7 it turns out to be true or false, correct? Is that
8 the standard you're held to as a lawyer, Mr. Berger?

9 A I think I understand your question. I would
10 answer yes to your question.

11 Q So it's not whether you are right or wrong
12 that you allege at end of the day that determines
13 whether you had probable cause, is it, sir?

14 A You are talking about the attorney or are you
15 talking about the party that the attorney represents?

16 Q One in the same.

17 MR. SCAROLA: Objection.

18 THE WITNESS: It's not one in the same.
19 It's not one in the same.

20 If I murdered you and your spouse sues
21 me for wrong --

22 BY MR. LINK:
23 Q You don't want to murder me, do you?

24 A -- sues me for wrongful death -- [REDACTED] coming
25 up with a bad example. I apologize.

1 But there's no way in the world that
2 Jeffrey Epstein had probable cause to sue Brad
3 Edwards.

4 Q And what [REDACTED] asking -- I appreciate that.
5 You consider Brad Edwards a friend, don't you?

6 A Yeah.

7 Q You like Brad Edwards?

8 A I do.

9 Q What's his reputation in the legal
10 community?

11 MR. SCAROLA: Objection. Beyond the
12 scope of redirect.

13 THE WITNESS: I think he has a good
14 reputation.

15 BY MR. LINK:
16 Q And has he always had a good reputation?

17 A I believe so.

18 Q So, what [REDACTED] really trying to understand
19 from you is will you agree with me that you evaluate
20 probable cause at the time that the lawsuit is filed?

21 A Yes.

22 Q And sometimes the allegations prove to be
23 true, right?

24 A Right.

25 Q And sometimes the allegation you make prove

1 to be untrue, right?

2 A Correct.

3 Q Have you ever pled any allegations,

4 Mr. Berger, that turned out to be untrue down the

5 line?

6 MR. SCAROLA: Objection, argumentive,

7 repetitious.

8 THE WITNESS: I have never pled

9 allegations that I knew were false.

10 BY MR. SCAROLA:

11 Q So it's your view that the allegations in

12 the complaint were known to be false?

13 A To Jeffrey Epstein.

14 Q So which allegations --

15 A Are we talking about the Scherer lawsuit --

16 Q No --

17 A -- or are we talking about Epstein's

18 allegations?

19 Q Epstein.

20 Show me which allegations in there

21 Mr. Epstein knew were false at the time he made it.

22 That's what you just said, so show me. Please point

23 out the allegations in that complaint, sir, that

24 Mr. Epstein knew were false when he made them.

25 You can underline with my pen.

1 A If he's alleging that he didn't do what he

2 did --

3 Q You just testified that Mr. Epstein made

4 allegations he knew were false. This is the

5 complaint. I would like you to highlight them for

6 me.

7 A Okay. Take a break.

8 Q Sure.

9 THE VIDEOGRAPHER: Going off the record

10 at 12:40 [REDACTED].

11 (A recess was taken.)

12 THE VIDEOGRAPHER: Going back on the

13 record. The time is 1:14 [REDACTED].

14 BY MR. LINK:

15 Q Mr. Berger, before we took our break, I

16 asked you to underline every allegation in that

17 complaint that you know that, at the time it was

18 written, that Mr. Epstein knew the statement was

19 false, right?

20 A Right.

21 Q So may I see what you have underlined that

22 you know that Mr. Epstein knew it was false?

23 Okay, so on the first page you underlined

24 that -- what happened at the Rothstein firm that

25 resulted in profoundly serious injury to Jeffrey

1 Epstein?

2 A It's patently false that Jeffrey Epstein was

3 not (sic) injured by anything that Brad Edwards did or

4 if -- I don't deny that there was a Ponzi scheme that

5 used the three cases we had as bait.

6 Q They did, right?

7 MR. SCAROLA: Excuse me. Please let

8 the witness finish his response.

9 THE WITNESS: I wasn't there. I don't

10 have personal knowledge. I am telling you

11 my conclusion based on what I have read in

12 the papers and all that -- so -- the

13 Ponzi -- Rothstein did use the Ponzi scheme.

14 Brad Edwards had no involvement in it.

15 Jeffrey Epstein was not damaged in any

16 way, shape or form by the Ponzi scheme.

17 It's impossible.

18 Jeffrey Epstein sexually abused dozens,

19 if not hundreds, of children. The fact that

20 that -- that those facts were used by a

21 crook to promote a Ponzi scheme didn't hurt

22 Jeffrey Epstein one bit.

23 BY MR. LINK:

24 Q So can you separate in your mind for your

25 testimony today what Mr. Epstein did and suits

1 against him by plaintiffs that allege wrongful sexual

2 conduct and his lawsuit against Rothstein, [REDACTED], and

3 Edwards related to the Ponzi scheme? Can you draw

4 separation, Mr. Berger?

5 A I think so.

6 Q Because you keep telling me about the

7 sexual conduct that Mr. Epstein --

8 A My point is, he was not -- he was not

9 injured -- no reasonable person could think that

10 Jeffrey Epstein who abused dozens of children and was

11 sued for it could be injured mentally. We're talking

12 about mental injury here -- mentally injured by Scott

13 Rothstein using these legitimate cases to defraud

14 investors.

15 Jeffrey Epstein's reputation was not

16 damaged at all. He had no reputation. He wasn't

17 mentally -- no one can convince me he was

18 emotionally disturbed by the fact that he learned

19 that his sexual predatory tactics were used in a

20 Ponzi scheme. It's inconceivable. And that's

21 basically the -- By the way, I didn't read the parts

22 that deal with the legal counts. I read the factual

23 parts.

24 Q So, can I just see the rest of it for a

25 minute that you marked?

1 A I didn't go through them --

2 Q I understand.

3 A When I got to count one, I stopped. That was

4 legal discussion. I just looked at the factual

5 allegations.

6 Q So, can you point out to me here where

7 Mr. Epstein talks about the damage to his reputation?

8 A It's damages. The first line you read said

9 profoundly damaged, something like that.

10 Q Well, profoundly damaged, you could have

11 monetary damages, right?

12 Is there a distinction in monetary damages

13 and emotional damages?

14 A Theoretically there are.

15 Q Show me where Mr. Epstein asked for his

16 damage to reputation. That's what you just said, his

17 reputation couldn't have been damaged.

18 Where does he seek damages for his

19 reputation?

20 MR. SCAROLA: Excuse me, Counsel. What

21 was read was, "resulted in profoundly

22 serious injury to Jeffrey Epstein." That's

23 what was just discussed.

24 THE WITNESS: Brad Edwards did not have

25 anything to do with the Ponzi scheme.

1 BY MR. SCAROLA:

2 Q I know you believe that, sir. I believe in

3 my heart that you believe that, okay?

4 A I believe Jeffrey Epstein knew that.

5 Q But what I asked you to do is to point out

6 in here the allegations that you somehow know that,

7 when they were made, that Mr. Epstein in his mind

8 knew they were false.

9 MR. SCAROLA: And that's exactly what

10 the witness is doing. Would you please let

11 him finish his response?

12 THE WITNESS: So the first one was

13 that -- Epstein saying he was profoundly

14 damaged. There's no way in the world that

15 that's true.

16 BY MR. LINK:

17 Q So he was not profoundly damaged, okay.

18 The next thing underlined was that the allegation

19 about [REDACTED] being a participant in the scheme by,

20 among other things, changing her prior sworn

21 testimony.

22 A She was not a participant in a scheme. She

23 may have changed her prior testimony. You pointed out

24 an inconsistency --

25 Q Right?

1 A -- between what she said in her deposition.

2 But she was not a part of any scheme. Epstein knew

3 that.

4 Q So Epstein knew the reason why she changed

5 her sworn testimony to the FBI and then when she got

6 to the Rothstein firm was -- how did he know why she

7 did that? How would he know?

8 A Sir, Epstein knew that her second testimony

9 where she accused him of these was true. So she didn't

10 change it because of a Ponzi scheme. She's changed it

11 because she told the truth.

12 Q So she lied to the FBI?

13 A Right.

14 Q So she's an admitted liar to the federal

15 government.

16 Is there a consequence for lying to the

17 federal government?

18 MR. SCAROLA: Objection, argumentive.

19 THE WITNESS: I don't know.

20 Was she prosecuted?

21 BY MR. LINK:

22 Q [REDACTED] just asking if there's usually a

23 consequence.

24 A I don't know.

25 Q You don't know?

1 A No.

2 I don't think that she was prosecuted.

3 Q So you underlined that Rothstein and his

4 co-conspirators unlawfully obtained approximately

5 1.2 billion. What is untrue about that?

6 A Well, if it's reflected on Brad, he wasn't a

7 co-conspirator.

8 Q It doesn't say Brad's name, does it?

9 A Just one second. I assume that it's part of

10 a complaint against Brad, so if it didn't mean to

11 include Brad, then I shouldn't have underlined it.

12 Q So do you want to squiggle through that

13 one? Take it out?

14 A Do you want to put in here that it's not

15 Brad? I will do that if you write, "except Edwards."

16 Go ahead.

17 Q [REDACTED] not going to change it, if that's what

18 you want to put in there.

19 Okay, let's see what else. Is it a true

20 statement that Rothstein and his co-conspirators

21 stole over a billion dollars from unexpected

22 victims?

23 A Yes.

24 Q So you underlined in paragraph 18 the

25 statement, "What is clear is that a fraudulent and

1 improper investment or Ponzi scheme was in fact
 2 conducted and operated by RRA and certain of the
 3 named defendants."
 4 One of the named defendants is
 5 Mr. Rothstein, right?
 6 A Yes.
 7 Q And did Mr. Rothstein, in fact, participate
 8 in the Ponzi scheme?
 9 A Yes.
 10 Q So what is it about that allegation that
 11 was untrue when it was written?
 12 A If it meant to include Brad and [REDACTED]. --
 13 Q Does it say Brad and [REDACTED] in there?
 14 A No. But it could be read to mean that. So
 15 [REDACTED] saying it would false if it was meant to include
 16 them.
 17 Q But it doesn't say Brad and [REDACTED].?
 18 MR. SCAROLA: No, but it does say
 19 defendants, plural.
 20 Please stop arguing. Ask questions,
 21 let the witness answer them, but please
 22 don't argue.
 23 THE WITNESS: If it said Rothstein, it
 24 would be true.
 25

1 BY MR. LINK:
 2 Q So in your world it's partially true
 3 because it included Mr. Rothstein? Yes?
 4 A No, it's not in my world. It's reality.
 5 Q So I thought you told us that you had no
 6 idea what was going on at the firm at the time,
 7 right?
 8 In 2008 and '09, you had no idea about the
 9 Ponzi scheme or what Mr. Rothstein was doing; is
 10 that right?
 11 A Right.
 12 Q Do you know every action that Mr. Edwards
 13 took in dealing with Mr. Rothstein?
 14 MR. SCAROLA: Excuse me. Could we ask
 15 one question at a time? And the question
 16 that is pending is to identify those
 17 portions of the complaint which this witness
 18 can identify as knowingly false statements
 19 by Epstein. Can we let him finish that
 20 question?
 21 BY MR. LINK:
 22 Q You can answer my question.
 23 Are you aware of all of Mr. Edwards'
 24 interactions with Mr. Rothstein?
 25 A No.

1 Q Are you aware of meetings that Mr. Edwards
 2 had with Mr. Rothstein?
 3 A [REDACTED] not aware of any meetings he had.
 4 Q Were you aware of the emails between
 5 Mr. Rothstein and Mr. Edwards about these lawsuits?
 6 A No.
 7 Q Were you aware of the emails between Marc
 8 Nurik and Mr. Rothstein about these lawsuits?
 9 A No.
 10 Q Were you aware of any structuring of these
 11 lawsuits with Mr. Edwards and Mr. Rothstein related
 12 to what would be pled?
 13 A Am I aware --
 14 Q Are you aware of that?
 15 A If it happened?
 16 Q Yeah.
 17 A No.
 18 Q So as you sit here today, isn't it true
 19 that you really, as I understand it, have no personal
 20 knowledge of the way the scheme was, in fact,
 21 conducted or who was involved; isn't that true?
 22 A I don't have any eyewitness knowledge.
 23 Q Personal knowledge, do you, sir?
 24 A Personal knowledge is the lawyers term for
 25 eyewitness knowledge, and I don't have any eyewitness

1 knowledge.
 2 Q You don't have any, do you?
 3 So what you're telling this jury is you
 4 happen to like Brad Edwards, and you don't want to
 5 even conceive for one second that he may have had
 6 some connection with Mr. Rothstein in the way these
 7 three cases were used; is that true?
 8 MR. SCAROLA: Objection, argumentive.
 9 THE WITNESS: There are statements in
 10 here that are categorically false because
 11 Jeffrey Epstein knew what he did.
 12 I do like Brad Edwards, and I don't
 13 believe that he participated in the scheme
 14 with Rothstein.
 15 BY MR. LINK:
 16 Q I got it. But you are not aware of any of
 17 the evidence connecting Mr. Edwards and Mr. Rothstein
 18 that relate to the three cases that were pending at
 19 the Rothstein firm, are you?
 20 MR. SCAROLA: Excuse me. [REDACTED] going to
 21 object. That question assumes that any such
 22 evidence exists, when Mr. Epstein had every
 23 opportunity to present that evidence to the
 24 court and has never presented any, because
 25 it doesn't exist.

1 MR. LINK: [REDACTED] pretty sure that lawsuit
2 has gone, Mr. Scarola. Please, save the
3 commentary. I appreciate it. It's great
4 advice, and I will continue to try to learn
5 from you.

6 MR. SCAROLA: Thank you. How about you
7 let the witness finish the answer to your
8 question before you get involved --

9 MR. LINK: I change the question as I
10 go. I can do that.

11 BY MR. LINK:

12 Q So, Mr. Berger --

13 MR. SCAROLA: So as long as the record
14 is clear that you have declined to allow him
15 to continue to answer the question, that's
16 fine.

17 BY MR. LINK:

18 Q Is there something more you wanted to say
19 about my pending question?

20 MR. SCAROLA: The pending question was
21 to identify every portion of this
22 complaint --

23 MR. LINK: Not --

24 MR. SCAROLA: -- that Mr. Berger knows
25 to be false.

1 sentence had nothing to do with the Ponzi
2 scheme.

3 BY MR. LINK:

4 Q Did Mr. Adler go to jail?

5 A Mr. Adler did go to jail.

6 Q Were you surprised that Mr. Adler would end
7 up going to jail for election improprieties?

8 A Yes.

9 Q How about your really good friend

10 Mr. Rosenfeld?

11 A Same thing.

12 Q Same thing.

13 So these are people that you knew really
14 well, right?

15 A Right.

16 Q Worked with them, trusted them, and they
17 did things that you couldn't imagine; isn't that
18 true?

19 A That's true.

20 Q So the fact that you can't imagine Brad
21 doing it doesn't mean that Brad wasn't somehow
22 connected, does it?

23 A Maybe you it doesn't.

24 Q You thought that way about Mr. Rothstein,
25 didn't you?

1 BY MR. LINK:

2 Q I will give you a very simple question.

3 Have you reviewed any of the email communications
4 involving Rothstein and the three plaintiff cases
5 that were being handled at the time you were at the
6 Rothstein firm?

7 A I don't know of any and I haven't reviewed
8 any.

9 Q So isn't it true that your opinion about
10 Brad Edwards is based on your personal view of him?

11 A And my interaction with him.

12 Q And I suspect you wouldn't have joined the
13 Rothstein firm if you didn't think he was a good guy,
14 would you?

15 A Yes.

16 Q Right. And I bet it was a shock to you
17 that he was running a Ponzi scheme, because nowhere
18 in your mind would you have thought that was
19 possible, true?

20 A True.

21 Q And probably the same thing with your
22 friend Mr. Adler. Didn't Mr. Adler have to go to
23 jail?

24 MR. SCAROLA: Excuse me. [REDACTED] going to
25 object. Compound. And Adler's jail

1 MR. SCAROLA: Objection. Argumentive,
2 repetitious.

3 BY MR. LINK:

4 Q Yes, sir?

5 A Yes.

6 Q And Mr. Adler?

7 MR. SCAROLA: Objection. Argumentive,
8 repetitious.

9 BY MR. LINK:

10 Q And Mr. Rosenfeldt?

11 MR. SCAROLA: Objection. Argumentive,
12 repetitious.

13 THE WITNESS: Correct.

14 MR. LINK: I don't have any further
15 questions.

16 REDIRECT EXAMINATION

17 BY MR. SCAROLA:

18 Q Are there any other sections of this
19 complaint that you know Mr. Epstein could not have
20 alleged in good faith?

21 MR. LINK: That was not my question if
22 you want to --

23 MR. SCAROLA: It's my question. It's
24 my question.

25 MR. LINK: Okay. So you are changing

1 the standard. That's fine.
 2 Do you want the rest of it back,
 3 Mr. Berger?
 4 THE WITNESS: It's along the same
 5 lines -- all of these are basically along
 6 the same lines in terms of lumping
 7 Mr. Edwards together with -- I should say
 8 Mr. Edwards and [REDACTED] together with
 9 Rothstein. So that's basically the -- my
 10 criticism of this, as well as -- as well as
 11 any suggestion that he could have been
 12 damaged.
 13 And if he was damaged financially, it
 14 was -- he wasn't really damaged -- he was
 15 out-of-pocket financially, but it's by his
 16 own doing, so I wouldn't consider that to be
 17 legal damages.
 18 BY MR. SCAROLA:
 19 Q It was suggested that Mr. Epstein, in
 20 filing this complaint, may have somehow relied upon
 21 internal email communications within Rothstein,
 22 Rosenfeldt & Adler. This complaint that we are
 23 looking at --
 24 MR. LINK: I am going to object. That
 25 is not that I said.

1 BY MR. SCAROLA:
 2 Q This complaint that we are looking at --
 3 MR. LINK: Mr. Scarola, you are
 4 misstating what I said.
 5 BY MR. SCAROLA:
 6 Q -- shows a filing date of December 7, 2009.
 7 Do you know of any way whatsoever that Mr. Epstein
 8 could have had access to internal emails of
 9 Rothstein, Rosenfeldt & Adler in December of 2009?
 10 A No.
 11 MR. LINK: Move to strike.
 12 MR. SCAROLA: Paragraph 23 of --
 13 THE WITNESS: Excuse me. Excuse me. I
 14 am going to move strike. It's a
 15 misstatement of what I said.
 16 BY MR. SCAROLA:
 17 Q Paragraph 23 of this complaint says that
 18 Edwards claiming the need for anonymity with regard
 19 to existing or fabricated clients, they were able to
 20 effectively use initials, Jane Doe or other anonymous
 21 designations, which was a key element in the
 22 fraudulent scheme.
 23 Let me ask you, first of all, about your
 24 own conduct. You were aware that these cases were
 25 being prosecuted using initials and pseudonyms,

1 correct?
 2 A Correct.
 3 Q And were also aware at the time that the
 4 use of initials and pseudonyms were required to
 5 protect the identity of individuals who were
 6 juveniles at the time these offenses were committed
 7 against them?
 8 A Yes.
 9 Q Was there ever any effort to use initials
 10 or pseudonyms as an element in a fraudulent scheme as
 11 opposed to simply following the law to protect the
 12 identity of juveniles?
 13 MR. LINK: [REDACTED] going to object the
 14 form. [REDACTED] going to move to strike. It's
 15 beyond the scope. He did not underline any
 16 of the phrases that you are referring to.
 17 THE WITNESS: No.
 18 BY MR. SCAROLA:
 19 Q Did Jeffrey Epstein know that the victims
 20 he was abusing were juveniles at the time he abused
 21 them?
 22 A Yes.
 23 Q In paragraph 31, the allegation is made
 24 that the litigation team -- of which you were
 25 identified as a member -- the litigation team reached

1 agreements to share attorney's fees with non-lawyers.
 2 Did you ever reach an agreement to share
 3 attorney's fees with non-lawyers?
 4 A No.
 5 Q Could there have possibly been any basis
 6 for Jeffrey Epstein to have alleged that there was an
 7 agreement reached by you or Brad Edwards to share
 8 attorney's fees with non-lawyers?
 9 A No.
 10 Q Subparagraph C says the litigation team
 11 used investor money to pay plaintiffs -- that is,
 12 [REDACTED], E.W. and Jane Doe -- upfront money such that
 13 plaintiffs would refuse to settle the civil actions.
 14 Did that ever happen?
 15 A No.
 16 Q Could there ever have possibly been any
 17 reasonable basis for Jeffrey Epstein in December of
 18 2009 to have alleged that it happened?
 19 MR. LINK: Object to the form. Move to
 20 strike.
 21 How he knows what's in Jeffrey's mind,
 22 I don't know. And the words say may have.
 23 It doesn't say it was done.
 24 You can answer.
 25 THE WITNESS: No.

1 BY MR. SCAROLA:

2 Q Were any searches, wiretaps or intercepted
3 conversations used in violation of state or federal
4 laws and Bar rules in connection with these -- the
5 prosecution of the claims against Epstein?

6 A No.

7 Q You have already told us that there was no
8 unreasonable or unnecessary discovery that was
9 engaged in for the sole purpose of furthering the
10 Ponzi scheme, correct?

11 A Correct.

12 Q Did Jeffrey Epstein know what Jeffrey
13 Epstein did and, therefore, recognized the fact that
14 when other victims' cases were being investigated,
15 activities on the airplane were being investigated,
16 what Jeffrey Epstein was doing on his private island
17 was being investigated, what Jeffrey Epstein was
18 doing in his 10s of millions of dollars New York
19 penthouse was doing, did he know what he himself did?

20 A Of course.

21 Q So when Jeffrey Epstein alleges in
22 paragraph 33 that the litigation team knew that
23 issues were being pursued and evidence was being
24 pursued unrelated to and unnecessary to the claims
25 pled in the cases on behalf of [REDACTED], E.W. and Jane

1 dozens of children over an extended period of time,
2 could Jeffrey Epstein have possibly made that
3 allegation in good faith?

4 MR. LINK: Object to the form. Move to
5 strike.

6 THE WITNESS: No.

7 BY MR. SCAROLA:

8 Q When it is alleged in subparagraph E, on
9 that same page, that you and Brad Edwards together
10 addressed the court on various motions using
11 ridiculous, inflammatory and sound-bite-rich
12 statements for purposes of pumping a Ponzi scheme,
13 could Jeffrey Epstein possibly have believed that to
14 be true when Jeffrey Epstein knew that he had, in
15 fact, engaged in dozens and dozens and dozens of
16 sexual molestation crimes?

17 MR. LINK: Object to the form and move
18 to strike.

19 THE WITNESS: No.

20 BY MR. SCAROLA:

21 Q When Jeffrey Epstein alleges in
22 subparagraph H that the litigation team, defined as
23 including you, knew or should have known that their
24 filed cases were weak and had minimal value, could
25 Jeffrey Epstein, knowing what he did to these three

1 Doe, did Jeffrey Epstein know about those things that
2 Jeffrey Epstein himself had done?

3 A Of course.

4 Q And if Jeffrey Epstein alleges there were
5 no juveniles, no children being transported on his
6 plane when the flight logs reflect that there were
7 children transported on Jeffrey Epstein's plane when
8 Jeffrey Epstein himself was on the plane, is there
9 any reasonable basis for Jeffrey Epstein to have
10 alleged otherwise?

11 A No.

12 Q Paragraph 42C on page 16 alleges that
13 Bradley Edwards, you and Russell Adler participated
14 in a deposition where outrageous questions were asked
15 of Epstein which had no bearing on the case, but so
16 that the video and questions could be shown to
17 investors.

18 Could Jeffrey Epstein possibly have had
19 any good faith basis for making that allegation?

20 A No.

21 Q When Jeffrey Epstein alleges that discovery
22 was conducted and attempted, that was completely
23 irrelevant discovery, unrelated to the claims, when
24 Jeffrey Epstein knows that he had been engaging in
25 the sexual abuse of dozens and dozens and dozens and

1 children, have possibly made that allegation in good
2 faith?

3 MR. LINK: Object to the form and move
4 to strike.

5 THE WITNESS: No.

6 BY MR. SCAROLA:

7 Q When it is alleged in subparagraph K that
8 the litigation team sought pilot and plane logs to
9 prime the investment pump with new money without any
10 relevance to the existing claims made by the RRA
11 clients, could Jeffrey Epstein, knowing about what
12 went on on those airplanes, have made that allegation
13 in good faith?

14 MR. LINK: Object to the form and move
15 to strike.

16 THE WITNESS: No.

17 BY MR. SCAROLA:

18 Q If Jeffrey Epstein alleges in this
19 complaint against Bradley Edwards that [REDACTED], E.W. or
20 Jane Doe voluntarily consented to their sexual
21 molestation, could Jeffrey Epstein have possibly made
22 that claim on the basis of any probable cause
23 whatsoever?

24 MR. LINK: Object to the form.

25 THE WITNESS: No.

1 MR. SCAROLA: I have no further
 2 questions.
 3 MR. LINK: I think we are done.
 4 MR. SCAROLA: Good. Thank you.
 5 THE VIDEOGRAPHER: Going off the
 6 record. The time is 1:32 [REDACTED].
 7 MR. SCAROLA: Before we go off the
 8 record, would you like to read the
 9 deposition transcript?
 10 THE WITNESS: No.
 11 MR. SCAROLA: Witness waives.
 12 - - -
 13 (The deposition concluded at 1:32 [REDACTED].)
 14
 15
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1 REPORTER'S DEPOSITION CERTIFICATE
 2
 3 STATE OF FLORIDA)
 : SS
 4 COUNTY OF PALM BEACH)
 5 I, SONJA D. HALL, certify that I was
 6 authorized to and did stenographically report the
 7 deposition of WILLIAM BERGER; that a review of the
 8 transcript was not requested; and that the transcript
 9 is a true and complete record of my stenographic
 10 notes.
 11 I further certify that I am not a relative,
 12 employee, attorney, or counsel of any of the parties,
 13 nor am I a relative or employee of any of the parties'
 14 attorney or counsel connected with the action, nor am
 15 I financially interested in the action.
 16
 17 Dated this 27th day of February 2018.
 18
 19
 20 _____
 21 SONJA D. HALL
 22
 23
 24
 25

1 STIPULATION
 2 It is hereby stipulated by and between
 3 counsel for the respective parties and the witness
 4 that the reading and signing of the foregoing
 5 deposition, and notice of filing be, and the same are
 6 hereby waived.
 7 AND FURTHER DEPONENT SAITH NAUGHT
 8 + + + + +
 9
 10 CERTIFICATE OF OATH
 11 STATE OF FLORIDA)
 12)
 13 COUNTY OF PALM BEACH)
 14)
 15 I, the undersigned authority, certify that
 16 WILLIAM BERGER personally appeared before me and was
 17 duly sworn.
 18 WITNESS my hand and official seal this 27th
 19 day of February 2018.
 20
 21 _____
 22 Sonja D. Hall
 23 Commission No.: GG 168652
 24 Notary Public - State of Florida
 25 My Commission Expires: 02-01-2022

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