

IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT, IN
AND FOR PALM BEACH COUNTY, FLORIDA

Case No. 502009CA040800XXXXMB

JEFFREY EPSTEIN,

Plaintiff,

vs.

SCOTT ROTHSTEIN, individually,
BRADLEY EDWARDS, individually,

Defendants/Counter-Plaintiffs.

TRANSCRIPT OF PROCEEDINGS

DATE TAKEN: Thursday, December 7th, 2017
TIME: 10:01 a.m. - 12:57 p.m.
PLACE 205 N. Dixie Highway, Room 11B
West Palm Beach, Florida
BEFORE: Donald Hafele, Presiding Judge

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

Sonja D. Hall
Palm Beach Reporting Service, Inc.
1665 Palm Beach Lakes Boulevard, Suite 1001
West Palm Beach, FL 33401
[REDACTED]

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APPEARANCES:

For Plaintiff/Counter-Defendant:

LINK & ROCKENBACH, P.A.
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For Defendant/Counter-Plaintiff:

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By JACK SCAROLA, ESQUIRE
By DAVID P. VITALE, JR.

For Jeffrey Epstein:

DARREN K. INDYKE, PLLC
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New York, NY 10022
By DARREN K. INDYKE, ESQUIRE

1 THE COURT: Have a seat. Today we are
2 going to go first with the Fifth Amendment
3 issues dealing with the transcripts and the
4 discovery responses of Mr. Epstein.

5 Are we prepared to proceed with that?

6 MR. SCAROLA: I am, Your Honor, yes.

7 MS. ROCKENBACH: Your Honor, if we
8 could, there were just two quick issues that
9 we could clean up on the omnibus motion.

10 I think Your Honor has tangentially
11 discussed them. They're items D and E. I
12 think we need a definitive ruling, and I
13 don't believe it would take more than five
14 minutes.

15 THE COURT: What is it that you are
16 speaking about? I didn't bring -- it is a
17 large binder and I didn't bring it with me.

18 MS. ROCKENBACH: Your Honor, issue D on
19 page 27, is that the Court should excluded
20 references to any cases against Epstein
21 which were not prosecuted by Edwards.

22 You previously have stated on the
23 record that we would constructively try
24 other sexual abuse or assault claims. And
25 you did indicate that Mr. Epstein's suits

1 that were brought by Edward's clients --
2 E.W., L.M. and Jane Doe -- were relevant.

3 So I just wanted, for the record, to be
4 definitive, in that, we are not trying the
5 other claims that may have been represented
6 by other attorneys -- like Mr. Scarola,
7 Mr. Josefsberg -- because they would be not
8 only irrelevant, they would be very
9 prejudicial to my client receiving a fair
10 trial.

11 THE COURT: Mr. Scarola.

12 MR. SCAROLA: It is not my intent to
13 get into the merits of any of the other
14 claims.

15 However, because motive is clearly
16 relevant and material, and because malice is
17 relevant and material, both with regard to
18 the primary claim and with regard to the
19 punitive damages claim, we respectfully
20 suggest that it is error if we were not
21 permitted to talk about what Mr. Epstein's
22 motive was for taking the extraordinary step
23 of filing a baseless claim against Bradley
24 Edwards.

25 THE COURT: Well, until we get into,

1 obviously, what may or may not be asked of
2 Mr. Edwards and Mr. Epstein principally on
3 these cases or these issues, the global
4 order of the Court would be that those
5 individual claims would not be subject to
6 discussion as to the merits, as Mr. Scarola
7 has stipulated.

8 However, as it relates to both probable
9 cause, i.e., motive and malice, the number
10 of claims -- that is, speaking in terms of
11 volume -- that Mr. Epstein was facing at the
12 time that he brought the suit and continued
13 the prosecution of that suit would be
14 relevant. So that's the distinction being
15 drawn by the Court, the detail, the merits,
16 whatever may have been discovered as it
17 relates to those cases would not be
18 individually admissible in evidence, or any
19 of those details from those cases.

20 However, as I said, the sheer number of
21 cases may be relevant, i.e., to tend to
22 prove or disprove a material fact as it
23 relates to probable cause and malice. So
24 that's the decision.

25 Next issue, please.

1 MR. SCAROLA: Excuse me. May I also
2 ask for this clarification, Your Honor?

3 Will we be permitted to discuss the
4 fact that Mr. Edwards had taken a leadership
5 role in coordinating the prosecution of all
6 of those claims, that is, that it was a --
7 it was a unified effort on the part of
8 multiple law firms that Mr. Edwards was
9 playing a leadership role, which then led to
10 a basis to focus upon Mr. Edwards because of
11 that leadership role?

12 THE COURT: If that's based on fact,
13 then I believe it would be -- you would be
14 able to introduce that, yes.

15 MR. SCAROLA: Thank you, sir.

16 THE COURT: Because, again, it tends to
17 prove or disprove a material fact, i.e.,
18 probable cause, motive, malice.

19 Again, whether or not the jury accepts
20 that -- it's going to be up to the jury to
21 accept it, reject it, give it the weight it
22 deserves, or to infer anything that they
23 reasonably believe would be inferrible as a
24 result of that information.

25 The next issue, please.

1 MS. ROCKENBACH: Thank you, Your Honor.

2 The next -- I think based on that
3 ruling, Your Honor would preclude the
4 settlements of any of the claimants,
5 including the settlement amounts of the
6 three that were represented by Mr. Edwards.

7 And in our motion in limine, we cited
8 the Florida Evidence Code 90.408, which
9 precludes the admissibility or evidence of
10 offers to compromise or settlements to prove
11 liability or absence of liability.

12 The cases settle all the time for many
13 different reasons. And I know that value
14 has become an issue in this case of
15 Mr. Edwards' three claimants, but certainly
16 not of any of the other claims that
17 Mr. Epstein may have settled. So that's the
18 first issue. Any other cases that he may
19 have settled are wholly irrelevant and
20 should be precluded.

21 THE COURT: Let me understand. The
22 issue of any settlements outside of the
23 three people, I don't have a problem with in
24 terms of introducing that information.

25 In other words, I don't intend to allow

1 that information to be introduced, unless I
2 can be persuaded otherwise.

3 MR. SCAROLA: I don't intend to attempt
4 to persuade you at this point in time.

5 I don't mean to interrupt the Court,
6 but I thought it might abbreviate things.

7 THE COURT: That's fine.

8 MR. SCAROLA: I don't intend to attempt
9 to convince the Court at this point in time
10 that that evidence is admissible. I can,
11 however, foresee that it becomes relevant
12 and material.

13 THE COURT: You are talking about those
14 individuals outside of the three --

15 MR. SCAROLA: Yes, Your Honor.

16 THE COURT: -- that we have been
17 speaking about at length.

18 MR. SCAROLA: And I am only raising
19 that now, because, although I don't intend
20 to contest admissibility at this point, I
21 foresee the potential that it may be
22 admissible and therefore it should be
23 discoverable.

24 We should be able to discover what
25 Mr. Epstein's economic motive was to attempt

1 to avoid liability in all of those other
2 cases, because his economic motive in
3 attempting to avoid liability -- not only of
4 the three cases settled for \$5.5 million,
5 but for the liability in all of the other
6 cases as well -- could become relevant and
7 material, since it's reasonably calculated
8 to lead to discoverable evidence.

9 I would ask -- and this may or may not
10 be the appropriate time to address this, but
11 it relates directly, so I think that it
12 is -- I would ask that Mr. Epstein be
13 compelled to respond to discovery with
14 regard to each of those settlements.

15 THE COURT: All right. Do you know how
16 many cases were actually filed against him
17 for the same or similar activities that were
18 alleged by the three individuals here?

19 MR. SCAROLA: Right now I would only be
20 guessing, Your Honor.

21 THE COURT: I know Mr. Kuvin had
22 several, if my memory is correct, in my
23 division.

24 MR. SCAROLA: Sid Garcia had a number
25 that he was prosecuting as well. There

1 were -- I think it was close to 20. I think
2 there were approximately 20. I think we
3 have listed each of the case numbers.

4 THE COURT: I won't hold you to the
5 exact number. It is really for anecdotal
6 information.

7 MR. SCAROLA: I think it was about 20.

8 Also, there were a substantial number
9 of additional victims with whom settlements
10 were negotiated in the context of the
11 non-prosecution agreement. Those were all
12 of the victims that were represented by
13 Mr. Josefsberg.

14 THE COURT: So they were claims that
15 were settled without the formal filing of a
16 lawsuit? Is that what you are suggesting?

17 MR. SCAROLA: I think that
18 Mr. Josefsberg may have filed some lawsuits,
19 but I believe he also settled some claims
20 under the terms of the non-prosecution
21 agreement simply by asserting the claims
22 under the federal statute and coming to an
23 agreement with regard to how those were to
24 be resolved without the necessity of filing
25 formal legal proceedings.

1 But I'm pretty sure that some cases
2 were filed by Mr. Josefsberg.

3 THE COURT: Thank you.

4 Ms. Rockenbach, so as far as the
5 collateral claims are concerned -- by no
6 means am I minimizing those by using that
7 terminology. It's just to distinguish the
8 three cases that are at the heart of this
9 case as it relates to the malicious
10 prosecution claim as opposed to those other
11 folks -- those other young women, in
12 particular, who had either brought suit or
13 made claims that were paid by Mr. Epstein.

14 The ruling of the Court is that I am
15 going to find at this point -- again,
16 subject to further inquiry at a later time
17 and whether or not that becomes an issue is
18 going to be subject to further scrutiny --
19 but I'm going to find that that information
20 would be discoverable, i.e., what was the
21 total amount of payments made by
22 Mr. Epstein?

23 At this point I am withholding my
24 ruling -- or deferring ruling on
25 admissibility, just for the record --

1 because you all are far better aware of the
2 standard than I -- but the standard being
3 because discovery is broader than what may
4 be admissible at trial, the total amount
5 paid, again, goes back to that place in time
6 when Mr. Epstein would have brought this
7 lawsuit at or near the time of
8 Mr. Rothstein's arrest; at or near the time
9 of federal and perhaps state agents raiding
10 the offices of the firm; at or near the time
11 of these cases reaching a crescendo as far
12 as discovery was transpired; and then
13 ultimately -- at least these three cases --
14 settling less than a year thereafter, as I
15 recall. You can correct me if I am wrong.

16 So the motive, malicious, probable
17 cause issues that we have talked about at
18 length in the past, again, because of the
19 nature of discovery being broader than what
20 may be admissible at trial, I am going to
21 require that information be provided, so I'm
22 deferring as to its admissibility.

23 Any confidentiality matters that may
24 have attached to those settlement offers --
25 strike that -- to those settlement payments

1 would also have to be discussed at a later
2 time.

3 Section 90.408, for the record, states,
4 though, "Evidence of an offer to compromise
5 a claim which was disputed as to validity or
6 amount, as well as any relevant conduct or
7 statements made in negotiations concerning a
8 compromise, is inadmissible to prove
9 liability or absence of liability for the
10 claim or its value. End quote.

11 So this is concerning, obviously, in
12 light of the statute, as to not only the
13 global settlement number that may be
14 involved, but also as it relates to the
15 three individuals.

16 Now, that's not squarely before me
17 today. And I would rather be able to deal
18 with that at some other time so that it's
19 fully briefed and we know where we are going
20 on this, because Mr. Scarola has his own
21 rationale for insisting that the \$5.5
22 million figure associated between the three
23 individuals involve directly here would, in
24 his view, be admissible.

25 Mr. Epstein largely hanging his hat on

1 section 90.408 takes a different view.

2 Similar to the hearsay rule, there are
3 noted and notable exceptions to 90.408,
4 meaning that, in the hearsay context, if the
5 information is not being used to prove the
6 truth of the matter asserted, there are
7 other ways in order to get that information
8 in.

9 Similarly, I am at least generically
10 aware that there have been exceptions that
11 have been stated under the law to 90.408.

12 So again, I would prefer to talk about
13 them at a later time. So I think that,
14 Ms. Rockenbach, what I would suggest you do
15 is separate out, as part of the motion in
16 limine -- my apologies -- if it is, I would
17 ask simply to separate it out and set it for
18 a half-hour special set hearing and we will
19 take it up at another time.

20 I would rather get into, now, these
21 issues of Fifth Amendment privilege that
22 have been scheduled.

23 MS. ROCKENBACH: Yes, Your Honor.
24 Thank you.

25 MR. LINK: Your Honor, may I make one

1 clarification, please?

2 THE COURT: Sure. Of course.

3 MR. LINK: Judge, I think I heard you
4 say that we are required to produce, on
5 Mr. Scarola's ore tenus motion, the
6 settlement agreements.

7 THE COURT: No, I didn't say settlement
8 agreements. I said the gross settlement
9 amount.

10 MR. LINK: Gross amount.

11 Your Honor, for further clarification,
12 would that amount only include those
13 settlements that took place on or after the
14 date that Mr. Epstein filed his Complaint?

15 If you look at their argument, the
16 exposure that still existed is what they
17 believe helps them show motive or malice.
18 Anything settled beforehand, obviously, had
19 been taken care of and should not fit within
20 the description that they gave the Court.

21 THE COURT: Mr. Scarola, your position
22 on that?

23 MR. SCAROLA: First, Your Honor, I'm
24 not sure we're arguing over any practical
25 significance because I don't think any of

1 the cases settled before this lawsuit -- the
2 malicious prosecution claim -- was filed.

3 MR. LINK: They did in fact, Your
4 Honor.

5 MR. SCAROLA: Well, I stand corrected,
6 then.

7 But at any rate, we respectfully should
8 get discovery that may be admissible with
9 regard to the extent to which these claims
10 were, quote, ginned up, unquote, as a
11 consequence of anything that Mr. Edwards
12 did.

13 And what we have heard repeatedly is,
14 we're talking about things Mr. Edwards did
15 while he was at Rothstein, Rosenfeldt &
16 Adler. So settlement of claims before then
17 as compared to settlement of claims after
18 that, and settlement of claims following the
19 disclosure of the alleged misconduct at RRA,
20 would be at least discoverable with regard
21 to whether these claims were somehow ginned
22 up.

23 THE COURT: We no longer need to use
24 the term alleged in terms of the misconduct
25 at RRA.

1 MR. SCAROLA: I was referring to --

2 THE COURT: There was misconduct at
3 RRA.

4 MR. SCAROLA: -- Mr. Edwards.

5 THE COURT: Whether there was
6 misconduct on behalf of Mr. Edwards, that
7 is, in fact, still a matter of allegation.

8 MR. SCAROLA: Yes, sir. And that's the
9 only misconduct I was referring to.

10 THE COURT: Absolutely.

11 I agree with Mr. Scarola, not only as
12 to his argument, but also as it relates to
13 Mr. Epstein's state of mind, i.e., probable
14 cause to bring this claim in the first
15 place.

16 It can be argued -- and I expect you to
17 argue that -- that being Mr. Mr. Link and
18 Ms. Rockenbach and his other counsel -- that
19 he clearly had probable cause to bring these
20 claims.

21 On the other hand, an argument -- a
22 piece of the argument that will be made on
23 behalf of Mr. Epstein is that he was looking
24 at this in a vengeful fashion, that he was
25 looking at this as a way to get back at

1 Edwards for not only his pecuniary lost, but
2 some of the other things that we have
3 discussed as it relates to motive, i.e.,
4 probable cause, i.e., malice.

5 So that's the reason behind the Court's
6 ruling that the global settlement amount may
7 be potentially admissible or discoverable,
8 in my view certainly. Because, again, the
9 issue of relevancy is much of a broader
10 discussion and much more of a broader view
11 on the part of the appellate courts as it
12 relates to admissibility.

13 So for now, that's the ruling of the
14 Court.

15 MR. LINK: I understand that. We want
16 to comply with the Court's order. Two
17 things. One, you're asking us to provide a
18 gross number of the total amount of
19 settlements, correct? And we ask the Court
20 that that number be subject to
21 confidentiality. We are disclosing
22 confidential settlement amounts --

23 THE COURT: That would be for, at this
24 point, Counsel and his client's eyes only,
25 and shall not be disclosed.

1 MR. SCAROLA: May we get a breakdown as
2 to -- because of the argument that's been
3 made and Your Honor's comments -- the number
4 of cases settled prior to the filing of the
5 malicious prosecution claim against
6 Mr. Edwards, that total gross; then the
7 number of cases settled while at -- while
8 Mr. Edwards was at RRA, that gross; the
9 number of the cases settled post RRA's
10 implosion and that gross?

11 THE COURT: Mr. Link or Ms. Rockenbach?

12 MR. LINK: Judge, I think that -- as I
13 said, I don't want to dispute the Court's
14 ruling, but now breaking it down into
15 segments has a whole different potential
16 relevance. It's no longer discovery. We
17 are looking at, then, finding individual
18 folks who may have resolved their cases,
19 where if we give you a gross number -- if I
20 understand Mr. Scarola's argument -- it's
21 the gross exposure that was hanging over
22 Mr. Epstein's head that caused him to do
23 this.

24 THE COURT: That's precisely the word I
25 was going to use, and that's the reason

1 behind the Court's ruling, is that the issue
2 of exposure is one that, in my respectful
3 view, would be the relevancy of potentially
4 admitting that information.

5 MR. SCAROLA: And knowledge of
6 Mr. Epstein's exposure would clearly be
7 based upon what he had to pay even before he
8 filed the lawsuit. I had to pay X number of
9 dollars and I'm really mad at Bradley
10 Edwards now for the role he has played in
11 causing me to expend that much money so far.
12 I'm going to put a stop to this. I'm going
13 to sue Edwards and scare off everybody else.

14 THE COURT: Again, for discovery
15 purposes only at this point, I'm going to
16 require, then, simply a breakdown of what
17 was paid prior to December 9th, 2009. Happy
18 anniversary in two days: the gift that keeps
19 on giving.

20 MR. SCAROLA: Actually, apparently
21 today is the anniversary day. Pearl Harbor.
22 Sneak attack.

23 MR. LINK: Justified filing. We can
24 sit out here and hurdle things to the court
25 reporter, Your Honor.

1 THE COURT: We have been speaking with
2 smiles on our faces, knowing that despite
3 the seriousness of everything that has gone
4 on here, the attorneys and the Court, at
5 least, can have moments of brevity that is
6 not disrespectful to any of the litigants or
7 any of those who may have been subject to
8 the prior cases. I want to make clear that
9 that is in fact the case in this brief
10 moment.

11 I think that I am at least reasonably
12 convinced that any prior settlements that
13 were made within a two-year period of
14 December 7th, 2009 -- and then that would be
15 broken down. And then anything paid after
16 would be broken down.

17 I think it's a relatively simple
18 exercise that won't cause any type of
19 overburden or onerous type of requirement on
20 the part of Mr. Epstein and/or his prior
21 counsel.

22 MR. LINK: We understand the Court's
23 ruling. Thank you, Judge.

24 THE COURT: Thank you, again. And
25 that's the reason behind the ruling that --

1 in fact, the nail was hit on the head by
2 Mr. Link, is one of mindset of Mr. Epstein
3 going to, again, what may be reasonably
4 calculated to lead to the discovery of
5 admissible evidence, and that is, relating
6 to issues of probable cause and malice as it
7 pertains to the potential total exposure,
8 the best -- a consideration of best
9 evidence, not so much under the rule --

10 What I'm saying is, a way to portray
11 that mindset would be one of the exposure
12 Mr. Epstein faced, not only at the time, but
13 potentially in the future so-called proof of
14 the pudding axiom that ultimately resulted
15 in the amount of money that was paid.

16 MR. LINK: Your Honor, should we
17 prepare an order on that to include the
18 attorneys'-eyes-only confidentiality ruling?

19 MR. SCAROLA: Attorneys and client.

20 THE COURT: Attorneys' and clients'
21 eyes only, not to be disclosed in any
22 fashion outside of this litigation.

23 MR. LINK: Actually, Mr. Edwards is one
24 of his own attorneys, isn't he?

25 MR. SCAROLA: He is. Yes.

1 THE COURT: Thank you.

2 All right, let's get to, now, the Fifth
3 Amendment issues, if we could please. I
4 have gone through the materials. Thank you,
5 particularly to Mr. Scarola and his office
6 for culling these out and -- pursuant to the
7 court order -- which I have never had a
8 situation in the many years I have been
9 doing this that Mr. Scarola -- for that
10 matter, Ms. Rockenbach -- to a lesser
11 degree, to the extent that Mr. Link has not
12 appeared before me that often -- to ever
13 knowingly transgress the Court's order. In
14 any event, I commend them for doing what
15 they have done to cull this out.

16 So my thinking is -- I think I asked
17 that both of you try to get together and see
18 if there's any common ground here to avoid
19 the Court's involvement.

20 Have there been any agreements with
21 respect to any of these questions and
22 answers?

23 MR. SCAROLA: We have been told every
24 one is challenged, Your Honor.

25 And if I might make a preliminary

1 statement.

2 THE COURT: Ms. Rockenbach you may as
3 well.

4 MR. SCAROLA: Your Honor, the defense
5 has cited case law that an element of a
6 civil claim may not be proved based solely
7 upon the inference that arises from the
8 assertion of the Fifth Amendment. We agree.
9 That is not a point of contention.

10 The defense has also asked for a jury
11 instruction to be given at the time that the
12 Fifth Amendment, I assume, is initially
13 asserted in the jury's presence by
14 Mr. Epstein -- in all likelihood through
15 playing excerpts of his deposition -- his
16 videotaped depositions -- and we have no
17 objection to that.

18 I think that both sides can get
19 together and fashion an appropriate jury
20 instruction that informs the jury that while
21 in the context of a criminal case, an
22 individual's assertion of a Fifth Amendment
23 right may not be used against him.

24 In the context of a civil case, an
25 adverse inference may be drawn from the

1 assertion of the Fifth Amendment privilege.
2 However, the jury may not base a finding
3 upon that assertion alone. There must be
4 some independent evidence to support the
5 adverse inference that's drawn.

6 That's -- obviously I'm paraphrasing.
7 But I think that's where we are. I think we
8 are in agreement with regard to those
9 matters.

10 Your Honor has also told us that we
11 should focus our offer of evidence with
12 regard to the assertion of the Fifth
13 Amendment on issues directly related to the
14 three plaintiffs who were represented by
15 Bradley Edwards. And we have culled down
16 the many assertions of Fifth Amendment and
17 attempted to do just that.

18 I'm, quite frankly, surprised in light
19 of those ruling and the agreement that we
20 have with regard to those basic principles
21 that there's anything left to challenge, but
22 apparently there's everything left to
23 challenge.

24 So if Your Honor has our notice of
25 filing deposition transcript excerpts and

1 discovery responses by Jeffrey Epstein
2 implicating the Fifth Amendment, the best
3 way to do this is to go through these one at
4 a time, and we are prepared to do that.

5 THE COURT: I understand.

6 Ms. Rockenbach, your initial comments.

7 MS. ROCKENBACH: Yes. Thank you, Your
8 Honor. This is a very significant issue to
9 the fairness of this trial.

10 And just to be clear, there is no
11 agreement that there should be a jury
12 instruction. In fact, that is the very
13 issue of whether this Court is going to rule
14 that even an adverse inference is given or
15 not.

16 An adverse inference, based on the case
17 law that we cited in our revised omnibus
18 motion in limine is not automatic. This is
19 a discretionary call by this Court.

20 And in fact, Your Honor, there is no
21 Florida reported case -- or else you would
22 have been provided with it -- that says you
23 automatically get a jury instruction on
24 adverse inference.

25 Rather, what this Court must do is

1 carefully balance the competing interest of
2 the party asserting the privilege --
3 Mr. Epstein -- and the party whom against
4 the privilege is asserted -- Mr. Edwards.
5 You must carefully balance and prevent the
6 detriment to the party asserting it. It
7 should be no more than is necessary to
8 prevent unfair and unnecessary prejudice to
9 the other side.

10 So, Your Honor, the case law that we
11 cited essentially says that there is a
12 tension between the Fifth Amendment right
13 and the right to a fair proceeding. That's
14 the tension. And this is in the civil
15 context, because we know from the US Supreme
16 Court and Baxter, they indicated that, yes,
17 you can have -- and can preserve your Fifth
18 Amendment right in a civil context.

19 But in the In Re: Carp decision that we
20 cited, courts -- lower courts -- and I'm
21 talking federal courts, because that's where
22 this issue most typically arises -- they
23 have consistently held that there's no
24 requirement that this Court draw an adverse
25 inference. So that's the threshold issue

1 that the Court must decide.

2 And how do you determine -- by what
3 criteria do you measure whether you take
4 these Fifth Amendment issues questions and
5 answers and allow an adverse inference or
6 not? I suggest to the Court the very first
7 issue is what is relevant to this action.

8 If Mr. Epstein was asked a question in
9 the three-hour -- he was deposed twice -- in
10 the first deposition he was deposed for
11 approximately three hours -- answered
12 abundant questions with regard to the
13 information -- the facts and
14 circumstances -- the information he
15 reasonably relied upon to establish probable
16 cause in instituting the original
17 proceeding, he abundantly gave that
18 information. He then gave it in two
19 affidavits, which were filed with the Court.

20 Had Mr. Epstein been asked the
21 question, Did you review this November 9th
22 newspaper article saying that Edwards had no
23 -- it doesn't exist, but --

24 THE COURT: I don't want to get into
25 the specifics right now. I was just giving

1 you a global opportunity to talk about the
2 law briefly.

3 MS. ROCKENBACH: Thank you, Your Honor.

4 The basic principle is that the
5 questions and answers must have some
6 probative value. And the case I'm citing --
7 relying on is out of the Fourth District
8 Court of Appeal.

9 I mentioned to Your Honor on
10 November 29th, the Frazier decision, where
11 the Fourth District Court of Appeal limited
12 adverse inferences against parties to when
13 they refuse to testify in response to
14 probative evidence offered against them.

15 So the question is, what is probative
16 evidence in this case? And we submit to
17 Your Honor -- I think Mr. Link will go
18 through the questions showing how they are
19 not probative of the issues relating to
20 malicious prosecution and the probable cause
21 element that is the threshold for Your
22 Honor's decision.

23 The other law that we would submit to
24 the Court to guide Your Honor is that there
25 has to be -- when there is an adverse

1 inference, it can only be -- I emphasize and
2 underline the word only -- straight from
3 Baxter -- be drawn when independent evidence
4 exists of the fact to which the party
5 refuses to answer.

6 So the silence must be countered by
7 or -- having an existence, outside of the
8 silence, independent evidence, and it must
9 obviously be relevant.

10 So the careful balancing that this
11 Court must exercise, as you are guided by
12 this case law, starts with, really, what is
13 relevant, and what Fifth Amendment questions
14 that were raised and asserted in the
15 depositions or for discovery are relevant to
16 the issues in this case.

17 Thank you, Your Honor.

18 THE COURT: Okay. Thanks a lot,
19 Ms. Rockenbach. I appreciate that.

20 All right. So this is essentially
21 Mr. Scarola's, on behalf of Mr. Edwards
22 proffer, so I'm going to give him the
23 opportunity to proceed first. And I will
24 give you my initial inclination first. If
25 there's an agreement, fine, which I don't

1 expect there to necessarily be.

2 MR. LINK: Your Honor, why would I be
3 standing here?

4 THE COURT: I am going to give you that
5 first, and tell you what my initial
6 inclination is as if we were sitting here
7 and these questions were being asked at
8 trial. It would be a whole lot shorter
9 because all I would have to say is sustained
10 or overruled, but I don't have that luxury
11 right now.

12 MR. LINK: You are struck with us right
13 now.

14 THE COURT: We will go through this.
15 We will start at page eight, lines 11
16 through 19 -- this is the March 17, 2010
17 deposition of Jeffrey Epstein.

18 Mr. Scarola, the first one -- the first
19 two questions, my inclination is to permit
20 those questions to be asked, finding,
21 consistent with Frazier and its progeny,
22 that such information will be able to be
23 proffered or testified to outside of the
24 mere invocation of the Fifth Amendment
25 privilege by Mr. Epstein as to questions

1 that read, quote, When and under what
2 circumstances did you first meet the
3 individual referenced by the initials L.M.?

4 The next question being, quote, Do you
5 know the individual named L.M. -- identified
6 by the initials L.M.? End quote.

7 So my inclination is to allow those
8 questions to be asked, because L.M. is
9 listed as a witness. And either she or
10 someone who is able to testify concerning
11 events associated with her will be
12 available.

13 MR. LINK: Yes.

14 THE COURT: Mr. Link, your position.

15 MR. LINK: Yes, Your Honor. It is not
16 the question.

17 THE COURT: And by the way -- so as to
18 save us a brief amount of time, that same
19 ruling would apply, at least until I hear
20 your position. But my inclined position, if
21 you will, will apply to the same or similar
22 questions that were asked as it relates to
23 E.W. and as results to Jane Doe that's at
24 issue here.

25 MR. LINK: I understand that, Judge.

1 I want to be really clear about this.
2 It's not the question in and of itself that
3 I have a problem with. This is what bothers
4 me. Simply showing the jury cumulative
5 question after question after question where
6 my client asserts Fifth Amendment is
7 prejudicial. So in looking at the facts --

8 THE COURT: There's always going to be
9 prejudice. And as many judges have stated
10 to me when I was practicing law -- and I
11 mentioned the anecdotal experience with
12 Justus Reid where all he often had to say
13 was prejudicial and it would be sustained
14 after I had gotten done -- and we were
15 co-counsel -- after I had gotten done with a
16 manila folder filled with cases and giving
17 an argument that I thought was a good one,
18 and being overruled, all he would have to
19 say was prejudicial and it would be
20 sustained. That was the point I was trying
21 to make the other day.

22 So I don't mean to interrupt you, but
23 you've mentioned that often. And
24 Ms. Rockenbach has often also used the word
25 prejudicial. We are not going to be able to

1 rewrite history in this case.

2 MR. LINK: I understand that. I do.

3 THE COURT: And that's a major
4 undertaking that you and Ms. Rockenbach took
5 on when you decided to get involved in this
6 process very late in the game.

7 I am not being critical of that. I'm
8 not taking any position whatsoever. It's
9 just, the reality is that this case comes
10 froth with prejudicial issues. And there's
11 going to be prejudice. There's no question
12 about it. It's not who ran a red light and
13 whether someone has a whiplash injury as a
14 result of that running of the red light.
15 This is a case that is froth with sexual
16 issues, sexual issues involving minors, as
17 alleged, and for which, at least one of the
18 guilty pleas was for the procurement of a
19 minor for prostitution.

20 As much as I want to and intend to
21 sanitize the case to the extent that there's
22 a level playing field from the inception,
23 and because of your and Ms. Rockenbach's
24 maturity in the manner in which you've
25 written your response papers and some motion

1 papers as well, is the very realization that
2 there is no getting away from many of these
3 things that are, in fact, going to be
4 potentially prejudicial to Mr. Epstein when
5 it comes to the sheer information based upon
6 the nature of these cases. It's just no
7 getting away from it. And you realize that
8 by virtue of the papers that you signed.

9 So I wanted to stop you there and
10 explain that to you. What has to be
11 demonstrated to the Court, however, that
12 when using the term prejudicial, it has to
13 come, in most situations, for the 403
14 analysis, to where any probative value is
15 materially outweighed by the prejudice.

16 Simply saying something is prejudicial,
17 as has been somewhat of the course thus far,
18 is not enough to persuade the Court. It has
19 to be to the extent that I have explained
20 under 402 -- better explained by Professor
21 Ehrhardt in his treatise.

22 So against that backdrop, tell me what
23 you want to say.

24 MR. LINK: And I appreciate that. And
25 the prejudice that I want to describe is

1 different. I want to address one of the
2 things the Court said.

3 Your Honor, we understand -- I have
4 said it probably at every hearing so far --
5 you can't sanitize this case completely. It
6 cannot be done.

7 In fact, frankly, we have to embrace on
8 our side of the table some of the issues
9 that you just described. They are part of
10 this case. We have to embrace them. We
11 have to deal with them. We know that. So
12 we are not asking you to eliminate all sex
13 and all reference to minors and things of
14 that nature. We are not asking the Court to
15 do that.

16 This is special. When you make a Fifth
17 Amendment determination and do balancing,
18 what I meant by prejudicial is this. The
19 first one is a great example. It is not
20 going to be a disputed fact at trial. We,
21 in fact, would stipulate that Mr. Epstein
22 knew L.M.

23 So if we are willing to stipulate
24 that -- they are also going to call L.M. Is
25 there a less prejudicial, less Fifth

1 Amendment way of getting that information to
2 the jury? There are certainly questions in
3 here that I'm going say to you we might
4 challenge. But this first one, for example,
5 what is the benefit to the jury to simply
6 hear the answer of the Fifth Amendment when
7 we will stipulate to the fact?

8 That's what you want the jury to
9 understand. Did he know L.M. He knew L.M.
10 So how does it help the jury? How does it
11 help this Court in maintaining the level
12 playing ground to have that question and
13 answer read to the jury? And it is not the
14 question --

15 THE COURT: This time I am not going to
16 answer. This time I let Mr. Scarola talk
17 about that overarching issue.

18 MR. SCAROLA: Thank you.

19 Your Honor, a primary focus of the
20 probable cause contention that is now being
21 made is that Jeffrey Epstein had reason to
22 conclude that Bradley Edwards was a knowing
23 participant in the Ponzi scheme because of
24 the way in which he was conducting discovery
25 while at RRA and what he was seeking to

1 discover while at RRA.

2 Had Jeffrey Epstein offered the
3 stipulation that has just been offered for
4 the very first time in this courtroom, that,
5 yes, I knew L.M; yes, I met L.M. at this
6 particular time; yes, she was a guest in my
7 home frequently; she was there 156 times --
8 had that --

9 MR. LINK: That was none of those
10 questions that we are talking about.

11 THE COURT: Let him.

12 Mr. Scarola, finish.

13 MR. SCAROLA: Had those acknowledgments
14 been made by Jeffrey Epstein, then perhaps
15 some of the discovery that was being
16 conducted by Bradley Edwards would have been
17 unnecessary.

18 But in fact, Jeffrey Epstein
19 stonewalled all of the discovery in the
20 civil cases. He refused to acknowledge even
21 that he had ever met L.M. He refused to
22 acknowledge, having stated in the presence
23 of Bradley Edwards and the court reporter,
24 "I like L.M. I liked her back then."

25 He was asserting the Fifth Amendment

1 with regard to all of those matters. And
2 the reasonableness of what Brad Edwards was
3 doing must be judged in that context.

4 And the fact that a stipulation is
5 being offered right now, thank you but no
6 thank you. It's far too late. I don't want
7 the stipulation. I want the jury to know
8 what Jeffrey Epstein was doing at the time.
9 And they are entitled to know what Jeffrey
10 Epstein was doing at the time, and continued
11 to do even after he filed the lawsuit
12 alleging that Brad Edwards fabricated these
13 claims. He wouldn't even acknowledge that
14 he knew L.M.

15 So for those reasons, it's relevant,
16 it's material. Its probative value is not
17 outweighed by any prejudice. And Your
18 Honor's ruling as you were inclined -- as
19 you announced the inclination to rule is
20 absolutely correct.

21 Thank you, sir.

22 THE COURT: All right.

23 MR. LINK: May I respond?

24 THE COURT: Yes.

25 MR. LINK: Your Honor, that's exactly

1 the point, which is this. I thought the
2 whole idea of this trial was to put the
3 facts before the jury and let them decide.

4 Simply asking the question -- and we
5 withdraw the stipulation -- but we are not
6 going to object -- if L.M. gets on the stand
7 and says that she knew Mr. Epstein, I am not
8 going to cross-examine her on that and say
9 you really didn't.

10 How does this question and simply
11 letting Counsel read Fifth Amendment
12 assertions help the jury? I understand he
13 wants to inflame them, but how does it help
14 them?

15 THE COURT: It gets me back to what I
16 have indicated to you as sort of a theme for
17 my rulings from the inception of our session
18 back on November 29th, and even guided the
19 Court through prior rulings as well, and
20 that is, the context of this is not just a
21 trial about Mr. Epstein's motivation,
22 conduct, et cetera. It has everything to do
23 with Mr. Edwards' defense of the malicious
24 prosecution as well.

25 A context is very important from the

1 Court's perspective of trying to divine a
2 fair result as to all of these issues that
3 have been confronted. And that is, not only
4 taking into account those issues that have
5 been raised by Mr. Epstein, but also those
6 issues that are relative to the defense of
7 the malicious prosecution -- strike that --
8 the presentation of the malicious
9 prosecution claim from Mr. Edwards'
10 standpoint. And context is really
11 important, as I may have earlier indicated.

12 This deposition was taken on March 17,
13 2010 -- which is a good idea, as far as I'm
14 concerned, whenever any type of litigation
15 is being taken -- being dealt -- especially
16 a case like this where malicious prosecution
17 is involved and motive, i.e., probable cause
18 and malice are all at issue -- you are
19 getting that person fresh, you are getting
20 that person within months of the filing of
21 the lawsuit.

22 As an aside, it drives me crazy when I
23 see for the first time someone coming up to
24 me -- for example, in a medical malpractice
25 case -- and there's a motion to continue a

1 trial set in January. The motion is brought
2 at the end of November in a case where the
3 alleged malpractice occurs in 2015. After
4 all of the pre-suit issues were taken care
5 of, they filed in 2016, and a principle
6 ground for the motion to continue is what?
7 We haven't taken the deposition of the
8 treating doctor, the defendant doctor, yet.

9 MS. ROCKENBACH: I saw that hearing.

10 THE COURT: I don't want to suggest
11 anything specific, but it happens with
12 relative frequency, not only in the medical
13 malpractice arena, but cases such as this as
14 well.

15 So, I don't want to get off on an
16 unnecessary tangent, but it's just an
17 illustration of taking these things in
18 context. Knowing what we did, we take
19 snapshots. 12/9 is a really important
20 snapshot -- or 12/7.

21 MR. LINK: 12/7.

22 THE COURT: I thought today was the
23 anniversary of the filing.

24 MR. SCAROLA: December 7th, yeah.

25 THE COURT: December 7th, snapshot.

1 MR. LINK: By the way, I said that to
2 my co-counsel she said, No, it was the 9th.

3 THE COURT: That's okay.

4 December 7th, '09. And then the
5 snapshot of the arrest of Rothstein, the
6 snapshot of when these agents went in and
7 did what they did, all really important
8 stuff, as is everything that transpired in
9 Mr. Epstein's life during that same period
10 of time.

11 But the beauty of being in this
12 position -- one of the few -- is that it
13 affords me, hopefully, the ability to --
14 from a mature, experienced standpoint
15 looking at it from both sides -- and trying
16 again to divine what is the appropriate
17 legal proposition in terms of the decision
18 that the Court is making, but also very much
19 taking into account both sides' positions
20 and the overarching fundamental fairness --
21 fair trial, everything that, hopefully, we
22 are all committed to when it comes to these
23 types of situations.

24 So I don't know if you want to add
25 anything as to these questions that would

1 carry the same decision as to C.W. and Jane
2 Doe.

3 But the order of the Court on those
4 questions and those that relate to those
5 other two young women, the objection is what
6 is proffered is permitted. The objections
7 are overruled. I am going to allow those
8 questions to be asked.

9 And based upon the case law that I have
10 earlier indicated that I reviewed, I find
11 that the information can be provided
12 independent of simply the invocation of
13 Mr. Epstein's Fifth Amendment right. So the
14 adverse inference aspect will also be
15 granted.

16 MR. LINK: Your Honor, how about just
17 for the record I do adopt my arguments for
18 the other --

19 THE COURT: Understood. I would be
20 shocked and saddened if that went on review
21 and Mr. Scarola, or anyone representing
22 Mr. Edwards on the appeal, would suggest
23 that there was any waiver. I wouldn't think
24 that to be the case. But thanks for that.

25 Next is number 12. "Have you ever

1 acknowledged in Bradley Edwards' presence
2 that you liked L.M.?"

3 That is subject to debate.

4 Mr. Scarola, your position.

5 MR. SCAROLA: The testimony will be
6 that at a deposition, Jeffrey Epstein
7 volunteered to Bradley Edwards -- in the
8 presence of both the court reporter and in
9 the presence of co-counsel, Steve Jaffe --
10 that he liked L.M. And that has obvious
11 relevance in materiality in the context of
12 his having sued L.M. for allegedly being a
13 knowing participant in the fabrication of
14 the claims that he brought against L.M.

15 And obviously these -- this deposition
16 is taking place after he already knows about
17 L.M.'s claims against him. So that
18 acknowledgment is strong support for the
19 fact that he has made the decision that he
20 is going to maliciously sue L.M. and Bradley
21 Edwards for the purpose of attempting to
22 defer -- excuse me -- deter each of them as
23 part of his extortion plot.

24 THE COURT: Mr. Link.

25 MR. LINK: Yes, Honor. So the record's

1 clear, I'm not going to reargue all the
2 things that I argued to the Court globally.
3 I will just adopt those for every one of the
4 questions here and just talk about the
5 specific question, if that's okay, Your
6 Honor.

7 MR. SCAROLA: I have no objection to
8 that procedure.

9 THE COURT: You don't?

10 MR. SCAROLA: No.

11 THE COURT: Well, I want to make sure,
12 though, that I am informed as to the nature
13 of the objections as it relates to each of
14 these questions, which is important.

15 MR. LINK: I will give you my
16 specifics. I just didn't want to go through
17 the whole litany that I gave you earlier.
18 I'm delighted to do it, but the Court might
19 throw me out of the courtroom.

20 THE COURT: No, I wouldn't do that.
21 Hopefully, that wouldn't be the case. I
22 don't throw things and nor will I throw
23 anyone out of the courtroom. I don't think
24 that has happened before, at least from the
25 lawyers' standpoint. There may have been

1 individuals who may have disrupted the
2 proceedings and I have asked for assistance
3 in that regard.

4 But anyway, getting back to what we're
5 dealing with here. What I would like you to
6 do is simply, if you would, tick off what
7 those objections would be.

8 You don't have to go into detail, based
9 on Mr. Scarola's acceptance of your
10 suggestion, but I would like to have the
11 record reflect just what the objections
12 would be in terms of a brief synopsis.

13 MR. LINK: Yes, Honor. Two for this
14 one. Relevance to this proceeding, and more
15 importantly, it's vague. At what point in
16 time? When? What does the word "like"
17 mean? Those are all things I can't answer
18 based on this question.

19 THE COURT: The objection is sustained.

20 Page 12. The inclination -- that's
21 Ms. Becker -- and it would really be the
22 same type of information. The objection is
23 sustained. And that's page 12, lines 2
24 through 13.

25 Page 12, lines 15 through 20, same

1 question as it related to co-counsel Jaffe.
2 The objection is sustained.

3 Let's move now to page 15, lines 15
4 through 19. The question begins, quote, Is
5 it your contention that L.M.'s statement to
6 the FBI was true? End quote.

7 Mr. Scarola, your position, please.

8 MR. SCAROLA: There are specific
9 references in the Complaint to allege
10 consistencies between what L.M. told the FBI
11 and the allegations included within the
12 civil complaint filed by Bradley Edwards on
13 L.M.'s behalf.

14 What Bradley -- excuse me -- what
15 Jeffrey Epstein knew at the time that he
16 filed the Complaint against Bradley Edwards
17 is clearly relevant and material, because
18 one is presumed to have intended to do that
19 which one does. If he knew his charges were
20 false, he is presumed to have intended to
21 file false charges.

22 So contending that the charges were
23 fabricated when he knew what L.M. told both
24 the FBI and Bradley Edwards was entirely
25 true, is clearly an issue of substantial

1 significance of these proceedings.

2 THE COURT: Thank you. Mr. Link.

3 MR. LINK: Yes, sir. It's overly
4 broad, vague. And relevance. And here is
5 why.

6 And Mr. Scarola asked the question, Is
7 it your contention that the statement
8 generally is true? The statement is
9 lengthy, there are multi-parts to it. He
10 didn't say this sentence or this sentence.
11 So if you ask that question about a lengthy
12 statement, how is the jury going to know
13 what we're talking about?

14 If we were in a courtroom and he said a
15 specific statement, that would be different.
16 But to say generically -- that's like asking
17 the question: Is every allegation true in
18 the Complaint? I don't think that question
19 would be admissible to the jury, Your Honor.

20 MR. SCAROLA: I'm sorry. Does Your
21 Honor want more argument?

22 THE COURT: No. I don't need more
23 argument. I thank you both.

24 The question on page 15, I presume,
25 it's line 15 through 19 -- because there's

1 some preface to the question -- I didn't
2 read into the record, because it's
3 unnecessary -- that question -- the
4 objection is sustained.

5 However, the following question, page
6 15, lines 20 through 24, which relays,
7 quote -- Question: Was L.M.'s statement to
8 the FBI false in any respect? is overruled.

9 MR. LINK: And I don't have a specific
10 objection, other than my general objection
11 to that question, Your Honor.

12 THE COURT: Very well. Thank you.

13 Again, with all of the trappings that I
14 have indicated earlier, that there would be
15 an adverse inference that can be argued to
16 the jury as it relates to these questions
17 that I am overruling objections to -- I
18 apologize for the grammar.

19 Next is page 17, lines 11 through 16
20 which begins, Question: Did you engage --
21 ever engaged in any sexual conduct with
22 L.M.? End quote.

23 Mr. Scarola.

24 MR. SCAROLA: Does Your Honor want to
25 follow the procedure of telling us what

1 you're inclined to do before I decide
2 whether I need to argue?

3 THE COURT: No. If I did, I would tell
4 you. So anything that I don't provide you
5 with my inclination is subject to debate.

6 MR. SCAROLA: Your Honor, clearly the
7 allegations included within the claim filed
8 by Bradley Edwards against Jeffrey Epstein
9 on behalf of L.M. alleged that Jeffrey
10 Epstein was regularly engaging in sexual
11 conduct with L.M. and paying her for that
12 sexual conduct during a period of time when
13 she was a minor.

14 So it is unquestionably relevant as to
15 whether Jeffrey Epstein acknowledges having
16 engaged in sexual conduct with L.M.

17 Indeed, the allegations in his
18 Complaint against Bradley Edwards are that
19 L.M. was a prostitute and that she was
20 voluntarily engaging in sexual conduct with
21 a Palm Beach billionaire -- referring to
22 himself.

23 So this question goes directly to the
24 allegations that he has made in the
25 Complaint and inquires as to what he is and

1 is not acknowledging with regard to those
2 allegations in the Complaint.

3 THE COURT: Thank you.

4 Mr. Link, also of import to the Court,
5 in addition to Mr. Scarola's statements is
6 the language contained in Mr. Epstein's
7 Complaint against Mr. Edwards and others
8 that the cases were, in fact, weak and
9 hence -- and his noting of those cases,
10 including L.M., C.W. (sic) and Jane Doe, and
11 having to, again, from Edwards' standpoint,
12 acknowledge, defend, and otherwise deal with
13 the strength or weaknesses of those
14 particular three cases by virtue of
15 Mr. Epstein's allegations that he brought so
16 as to, again, show probable cause in
17 particular.

18 Your position, please.

19 MR. LINK: Yes, Your Honor. Listen, we
20 operate in a precise craft. If you look at
21 this question, Your Honor, it's vague and
22 it's overbroad.

23 He doesn't give us a time frame. He
24 doesn't ask when she was a minor, was she
25 over 18. It could have been yesterday.

1 This deposition is from 2010. There are
2 simply no boundaries to the question. And
3 if you're asking the question to fit within
4 the malicious prosecution, then it should go
5 to something that's relevant there.

6 But to simply ask, Have you ever had
7 sexual activity with a person, that's the
8 most generic, vague statement I have ever
9 heard.

10 THE COURT: As the neutral arbitrator,
11 again, I bring you back to the neutral
12 arbiter. I bring you back to -- this
13 deposition was taken March 10, 2010 --
14 March 17th, 2010. Forgive me.

15 If it can be shown between now and when
16 this question -- if it's intended to be
17 published -- is published that L.M. was not
18 a minor prior to March 17, 2010, then I will
19 revisit the issue.

20 However, for all the reasons that were
21 expressed by Edwards' counsel's argument and
22 the additional reason that the Court
23 expressed in terms of supporting it -- it
24 meaning the Court's decision -- the
25 objection is overruled.

1 It does have a time frame. It says
2 ever. Meaning at any time prior to
3 March 17th, 2010.

4 If it can be established to my
5 satisfaction -- bring in her birth
6 certificate -- that she was not a minor at
7 any time prior to March 17, 2010, I will be
8 willing to revisit.

9 MR. LINK: She was, Your Honor. She
10 was.

11 THE COURT: That's fine.

12 MR. LINK: But she wasn't in that
13 entire time frame.

14 THE COURT: Well, be rest assured that
15 I will always -- no matter the most
16 innocuous representation of impeachment, if
17 you will, in terms of the deposition, for
18 example -- when a deposition is used in the
19 courtroom that I am presiding in, I am -- I
20 won't say always, because there may be
21 exceptions -- but clearly in this case, I
22 will always be vigilant in terms of letting
23 the jury know when the deposition took
24 place; when the statements were made; when
25 the interrogatories were executed; when the

1 response for production was made and
2 answered.

3 Those dates are critical in my
4 respectful view anytime the jury is
5 analyzing any case.

6 So what I meant by potentially the most
7 innocuous attempt to impeach, they will get
8 the date of the deposition, typically
9 without fail.

10 MR. LINK: And I appreciate that. My
11 objection, simply, if he asked a better
12 question -- if I think it was tied to a
13 specific time frame, I wouldn't have an
14 objection to it. That was all.

15 THE COURT: Ever engaged in sexual
16 conduct with a minor is? as far as I'm
17 concern, as narrow as you need to get.

18 MR. LINK: I don't mean to keep
19 arguing. It doesn't say when she was a
20 minor. But I accept the Court's ruling. I
21 don't want to keep arguing.

22 THE COURT: All right. I think my
23 position is clear on the record. I'm not
24 going to revisit it.

25 The next question, quote, Have you ever

1 exchanged anything of value with L.M.?

2 For the same reasons indicated, the
3 objection is overruled.

4 MR. LINK: Thank you.

5 THE COURT: Again, all of the
6 objections are adopted.

7 Page 17 through 18, lines 24 through 4
8 -- that is 24, 17 to 4, 18.

9 Question, quote, did you ever direct
10 anyone to deliver anything of value to L.M.?
11 End quote.

12 I have seen documentation in that
13 respect, meaning, even though I have
14 sustained objections to the global documents
15 with the caveat that individual documents
16 may be able to be admitted, I have seen
17 documents -- for example, in one of the
18 compilations that we dealt with on
19 Tuesday -- it had, Please make sure this is
20 delivered to one of these three young
21 ladies -- and I can't remember which one --
22 after her performance or when she gets off
23 stage.

24 I don't know whether that was on a
25 stage at one of the gentlemen's clubs or at

1 the stage of a high school production, but
2 that's what it says.

3 So there is independent evidence that I
4 have probably seen myself that would support
5 Frazier and its progeny's analysis as it
6 relates to not allowing simply the
7 invocation of the Fifth Amendment to carry
8 the day from an evidentiary standpoint.

9 So that is -- the objection is
10 overruled, the proffer is permitted with the
11 inferences that we have discussed earlier.

12 I don't know -- strike that.

13 Let me get back to the question before
14 I indicate what my issues are with it.

15 Page 18, lines 6 through 10. Question
16 Do you know Carolyn Andriano? End quote.

17 Who is Carolyn Andriano?

18 MR. SCAROLA: As Your Honor will see
19 from the next question, Carolyn Andriano was
20 the minor who brought L.M. to Jeffrey
21 Epstein and was paid a bounty for her
22 delivery of another child to him. That's
23 what the independent evidence will be with
24 regard to the role that Carolyn Andriano
25 plays with respect to the L.M. case.

1 THE COURT: And it's relevancy to what
2 we are doing here?

3 MR. SCAROLA: It proves the strength of
4 these claims, that they were not ginned up,
5 that there was independent third-party
6 testimony from multiple witnesses, one of
7 whom was Carolyn Andriano to support the
8 claims of L.M. And that additional
9 testimony was obviously known to Jeffrey
10 Epstein when he is evaluating whether these
11 were fabricated cases or whether they were
12 real claims supportable by real evidence.

13 So this goes to the strength of the
14 cases being prosecuted by Bradley Edwards,
15 and to Jeffrey Epstein's motive to avoid
16 ever having to defend these cases on their
17 merits by doing what he could to extort
18 Bradley Edwards to abandon the legitimate
19 interest of his clients.

20 THE COURT: Thank you.

21 Mr. Link.

22 MR. LINK: Yes, sir. Relevance. This
23 is a person that I haven't -- is not one of
24 the three folks that we have been talking
25 about.

1 So if we are letting in information
2 about a person who is not one of the three,
3 then we are going to be back to my having to
4 call them on the stand, or Mr. Scarola, to
5 do the link that he just described, which is
6 going to be a 403 prejudicial analysis this
7 Court has to engage in, because what he just
8 said isn't part of this deposition that we
9 have seen.

10 So we are now getting into introducing
11 another alleged victim, and the
12 cross-examine of somebody other than the
13 three.

14 THE COURT: Well, I don't know if
15 Ms. Andriano would be construed as a victim,
16 unless she herself was engaging in sexual
17 conduct with an adult -- simply being
18 friends with an adult doesn't constitute her
19 being a victim.

20 She may face some type of potential
21 criminal charges, if she's procuring another
22 for sexual activity --

23 MR. LINK: Maybe Mr. Scarola can
24 stipulate she was not one of alleged
25 victims.

1 MR. SCAROLA: No, I cannot stipulate to
2 that. That is contrary to the facts.

3 Carolyn Andriano -- so that Your Honor
4 is aware of what the evidence will show --
5 Carolyn Andriano was a minor. She was
6 recruited for performing sexual acts in
7 exchange for money for Jeffrey Epstein.

8 Jeffrey Epstein's modus operandi was to
9 pay a bounty to those who were already
10 performing sexual acts for him for anybody
11 else that they could bring to him who he
12 found acceptable for engaging in similar
13 conduct.

14 So Carolyn Andriano was paid to engage
15 in sex with Jeffrey Epstein and recruited
16 L.M. to engage in sex with Jeffrey Epstein.

17 That's what the evidence will be.
18 That's how L.M. came to be in contact with
19 Jeffrey Epstein.

20 Carolyn Andriano would be a witness to
21 the fact that L.M. was a child victim of
22 Jeffrey Epstein.

23 THE COURT: Do you intend to bring her
24 in to testify?

25 MR. SCAROLA: I don't know that I am

1 going to need to bring her in to testify.
2 She's available. She's on our witness list.

3 But, clearly, L.M. herself will be able
4 to testify, I was recruited by Carolyn
5 Andriano to go to Jeffrey Epstein's house.
6 She brought me there. She witnessed my
7 being there. And it was as a consequence of
8 her introduction that I became engaged in
9 the victimization that is subject of the
10 civil complaint filed by Bradley Edwards
11 against Jeffrey Epstein.

12 Now, if that were found by the Court
13 for some reason not to be an adequate
14 predicate for the introduction of this
15 testimony, then Carolyn Andriano would be
16 available to testify. But I don't think
17 that that would be necessary and I wouldn't
18 intend to bring her, unless the Court found
19 it was necessary.

20 It's especially not necessary because
21 the testimony of L.M. alone is sufficient to
22 lay a predicate for the introduction of
23 these two questions and the adverse
24 inferences that can be drawn from those two
25 questions.

1 I, too, Your Honor, want to keep this
2 case focused, to the extent we can, on the
3 issues directly involved in this lawsuit.
4 But these are issues directly involved in
5 this lawsuit.

6 I don't need to get into how many times
7 Carolyn Andriano was victimized by Jeffrey
8 Epstein, all of the proof that supports the
9 quality of her claims. That, I agree, is
10 not what this lawsuit is about. But it is
11 about L.M. and the quality and strength of
12 her claim as known by Jeffrey Epstein at the
13 time he alleged that these were fabricated
14 charges.

15 MR. LINK: Your Honor, I believe
16 Mr. Scarola made my argument for me. This
17 is a minor, and consistent with the Court's
18 ruling the day before yesterday, we have
19 been using Carolyn's name -- if you want to
20 sanitize the record and go back to her
21 initials -- because she was a minor at the
22 time. I just remind the Court --

23 THE COURT: I know. That's something
24 that's of concern to me, too. I want to
25 make sure, though, that we do that. Again,

1 if any of these young women continue to want
2 to have their pseudonyms, their initials,
3 Jane Doe -- if I'm using the right word --
4 used, I am going to continue to respect that
5 and do the same with Ms. Andriano.

6 If any of these females were minors at
7 the time, then they would have that -- what
8 I would perceive to be a right -- if not a
9 legal right, certainly a right -- would be
10 an appropriate right from a value type of
11 consideration when it comes to their
12 initials.

13 But what I'm dealing with here is
14 trying to divine the difference between the
15 relevancy for the malicious prosecution
16 claim and the indirect information, so to
17 speak, because Carolyn Andriano was not one
18 of the three individuals represented by
19 Mr. Edwards, number one.

20 Number two, because the adverse
21 inference issue is something that is
22 significant, and the balancing test that's
23 used by the court always has to respect the
24 constitutional right to invoke the Fifth
25 Amendment, again, weighed against relevant

1 information necessary for the -- in this
2 case, Edwards to prove his malicious
3 prosecution case -- and at the same time
4 show what was a lack of probable cause on
5 the part of Mr. Epstein and defending
6 against -- strike that -- in showing that he
7 lacked probable cause and also showing
8 malice. That's my concern. Is it
9 collateral?

10 MR. SCAROLA: Because your Honor is
11 pausing and seems to be weighing that issue,
12 let me simply point out that there's nothing
13 about either of these questions that
14 identifies Carolyn Andriano as a victim of
15 Jeffrey Epstein.

16 If that's a concern that the Court has,
17 and it were to tip the scales in the
18 direction at which I suggest they clearly
19 need to go anyway, these questions don't
20 implicate Carolyn Andriano as a minor victim
21 of Jeffrey Epstein. They do clearly
22 establish that she is a witness who would
23 corroborate the strength of L.M.'s claim.

24 Whether we ever get into talking about
25 whether Carolyn Andriano was a victim of

1 Jeffrey Epstein, that's a separate issue,
2 and can be dealt with and should be dealt
3 with separately, not in the context of those
4 questions.

5 THE COURT: Mr. Link, anything further?

6 MR. LINK: Two last points. I don't
7 know how -- who the person is that
8 introduced you has anything to do with the
9 strength or weakness of the claims. But if
10 it helps the Court, because of the
11 balancing -- we really appreciate the Court
12 taking the time to consider the balancing --
13 if L.M. gets on the stand and is asked the
14 question, Who introduced you to Mr. Epstein?
15 we're not going to object to her answering
16 that or challenge it. And so that allows
17 the information that Mr. Scarola says he
18 needs in a way that balances the Fifth
19 Amendment right, and hopefully keeps one
20 other formerly known person out of this
21 proceeding, Your Honor.

22 THE COURT: Well, while I do have
23 obviously an abiding concern with, not only
24 the efficiency of trying the case, but also
25 to not have to expose anyone still

1 relatively young to being a focus of this,
2 in balancing the Fifth Amendment invocation
3 with the factors that we discussed in
4 Frazier and its progeny, I am going to find
5 that these questions would be permissible to
6 be asked.

7 I believe that they do formulate a
8 nexus between Mr. -- allegedly between
9 Mr. Epstein, Ms. Andriano and L.M. so as to
10 directly and not collaterally impact the
11 strength of Mr. Epstein's claims versus
12 Mr. Edwards' claims that these contentions
13 made against him in the lawsuit filed
14 against him by Epstein lacked probable cause
15 and were in fact maliciously brought, i.e.,
16 did Mr. Epstein knew of this arrangement,
17 allegedly -- knew of the alleged
18 arrangement, and that, as such, it was a
19 factor, potentially, in him bringing this
20 claim against Mr. Edwards for the reasons
21 enunciated by Mr. Scarola.

22 MR. LINK: Thank you, Judge.

23 THE COURT: The next issue is page 18,
24 line 23, which states, quote, Question: Did
25 L.M. suffer any damages as a consequence of

1 any interaction between you and L.M.? End
2 quote.

3 Again, for the reasons outlined
4 earlier, my inclination is to go ahead and
5 allow it.

6 Mr. Link.

7 MR. LINK: Yes, Your Honor. I believe
8 that it is speculative. I don't know how
9 Mr. Epstein would be qualified to testify
10 about any damages suffered by L.M. The
11 damages alleged are psychological damages,
12 not physical damages. It seems to me if you
13 ask that question, it's being asked to the
14 wrong person.

15 THE COURT: I don't think there would
16 have been any Fifth Amendment issues, that
17 I'm aware of, in going through this law
18 pretty carefully and went back to this
19 question to see if there would be any Fifth
20 Amendment dangers here meaning, would there
21 have been any harm to Mr. Epstein by simply
22 saying, I don't know?

23 To my satisfaction in reviewing the
24 cases, it seems to be that an answer, I
25 don't know, would not cause him any concerns

1 as it relates to the Fifth Amendment, as it
2 relates to this type of question.

3 There are questions, however, where it
4 is later proven, that is, a significant fact
5 at issue, if it is later proven to be true,
6 meaning that the witness did have knowledge
7 of a given event but said that he or she
8 didn't, then that could used against that
9 individual. But here, I don't see it as
10 being a matter that he had to concern
11 himself with Fifth Amendment implications.

12 MR. LINK: Your Honor, if I could just
13 point out the words, "consequence of any
14 intersection." I want to make sure that we
15 have the Court's ruling that you are
16 overruling the Fifth Amendment assertion
17 here and saying that it was not an
18 appropriate assertion to the question; is
19 that correct?

20 THE COURT: No, I'm not saying it's not
21 appropriate. He can invoke his Fifth
22 Amendment right. I'm saying in my review of
23 the law, it did not appear that by answering
24 that question there was any exposure to be
25 faced as a result of answering, I don't

1 know, to that particular question.

2 MR. LINK: I suggest the words,
3 "consequence of any interaction" is
4 absolutely the type of linkage that makes it
5 a meaningful Fifth Amendment assertion.
6 Obviously it makes a difference to us in how
7 we go forward.

8 If the Court is saying, I am ruling
9 because I don't think the Fifth Amendment is
10 applicable, that's one ruling. If you're
11 saying it's applicable, but I find that it
12 is relevant, not speculative, different
13 ruling.

14 THE COURT: The second one.

15 MR. LINK: Thank you, Your Honor.

16 THE COURT: Even though, as I said
17 before, as a matter of my own research, it
18 appears that if he said, I don't know, it
19 would not have any critical implications in
20 terms of any type of self-incrimination,
21 unless he did know at the time, and
22 Mr. Edwards, in his representation of L.M.,
23 was able to prove that. But I don't want to
24 get there. I don't need to jump off that
25 cliff. I can repose my confidence in the

1 law of Frazier and its progeny to find it
2 would be relevant.

3 MR. LINK: So we're going to stay on
4 the cliff?

5 THE COURT: Correct.

6 MR. LINK: Thank you, Judge.

7 THE COURT: Page 34, line 23 through
8 35, line 17. Question: "Specifically, what
9 are the allegations against you which you
10 contend Mr. Edwards ginned up? End quote.

11 The objection is overruled.

12 Same with 36, line 29, which is a
13 similar question asked.

14 MR. LINK: Your Honor, if I could just
15 be heard on this for one moment.

16 THE COURT: Sure.

17 MR. LINK: I believe if you look at
18 pages 33 and 34 from the March 17th, 2010
19 transcript, you will see that these
20 questions were actually answered.

21 THE COURT: I recall.

22 MR. LINK: And I think the questions
23 have been answered. The fact he changed the
24 wording a little bit shouldn't give the
25 right to the adverse inference, because the

1 information has been provided.

2 So I think essentially these are
3 duplicative questions and they were
4 answered. So allowing the cumulative effect
5 of continuing to read Fifth Amendment
6 assertions to the jury is inappropriate in
7 this case, Your Honor.

8 THE COURT: Well, I'm not sure in what
9 context these questions were asked. And
10 that's my own error. I just didn't have the
11 time to go back and match up depositions at
12 this particular moment getting prepared for
13 this as I did when I read the deposition
14 testimony on many occasions in the past.

15 MR. LINK: May I suggest we defer,
16 then, on these two and bring them back
17 before you?

18 THE COURT: Just have somebody look at
19 that and see whether it was asked and
20 whether there's context --

21 MS. ROCKENBACH: May I approach, Your
22 Honor? It is page 33, line 14, and as well,
23 page 34, line 7.

24 MR. SCAROLA: Page 33, 14?

25 MS. ROCKENBACH: And page 34, line 7.

1 It starts with the answers from Mr. Epstein.

2 THE COURT: Let me take a look at that.

3 Thank you.

4 MR. SCAROLA: I'm sorry, 34, line 7?

5 MS. ROCKENBACH: Yes.

6 THE COURT: I see where they are
7 answered, but then the question is asked
8 after Mr. Epstein gives an answer to the
9 broader question, what does ginned up these
10 allegations mean? That came from him.

11 Later, the question at issue here is,
12 "Specifically, what are the allegations
13 against you which you contend Mr. Edwards
14 ginned up?"

15 He answers, quote, I would like to
16 answer that question. A, many of the files
17 and documents that we've requested from
18 Mr. Edwards and the Rothstein firm are still
19 unavailable.

20 "With respect to anything I can point
21 to today, I'm, unfortunately, going to have
22 to take the Fifth Amendment on that, Sixth
23 and Fourteenth. End quote.

24 He goes on to say in response to the
25 following question on this same page,

1 immediately thereafter, quote, Question: You
2 seemed to be defining ginned up as crafted;
3 is that correct?

4 "Answer: That's correct.

5 "Question: Does ginned up or crafted
6 mean fabricated?"

7 He then, again, states -- that, being
8 Mr. Epstein -- in response to that
9 question -- page 35, line 12, the witness
10 states, quote, I'm sorry, Mr. Scarola, I
11 understand that you are trying to backdoor
12 your way into a waiver of my Fifth
13 Amendment, but respect (sic) to that
14 question, I'm going to have assert (sic) my
15 Fifth Amendment, Sixth Amendment and
16 Fourteenth Amendment rights. End quote.

17 I'm reading directly from the
18 transcript with the grammatical errors
19 and/or typographical errors that may have
20 been involved.

21 So the objection to overruled. The
22 same with page 36, lines 1 through 9 for the
23 same reasons I mentioned earlier, consistent
24 with the ruling I made earlier.

25 The next is pages 36 through 37, lines

1 10 through 7 -- line 10 on 36 to line 7 on
2 page 37. And the question that is at issue
3 is -- near the bottom of the page -- the
4 proffer, quote, Who else besides Bill
5 Clinton is included in your reference to
6 various people?"

7 The answer was, quote, There are people
8 in California. There are people in New
9 York. End quote.

10 Then question, quote, Would you name
11 them for us, please?"

12 And Mr. Epstein takes the Fifth and
13 Sixth and Fourteenth Amendment privileges.

14 Mr. Scarola?

15 MR. SCAROLA: The Complaint itself
16 alleges that the testimony process of
17 ginning up these claims included involving
18 specific individuals as to whom there was no
19 basis to take discovery, and that the only
20 reason why those individuals were included
21 was to knowingly support the Ponzi scheme
22 being perpetrated in conspiracy with
23 Mr. Rothstein.

24 So this goes directly to the
25 allegations that are included within the

1 Complaint. And if he's telling us that
2 there's improper discovery that is alleged
3 to have been taken, we are entitled to know
4 who those people are that he claims had
5 nothing at all to do with this and that
6 there was no reasonable basis to implicate
7 in any way, that is, by even taking their
8 depositions.

9 So it seems to me that this is very
10 clearly, very directly relevant and material
11 in light of the allegations that are
12 included within the Complaint.

13 THE COURT: To put this in some brief
14 context, the first question in this line of
15 questioning dealt with what specific
16 discovery proceedings did Edwards engaged in
17 that you contend form the basis for your
18 lawsuit, i.e., the lawsuit that was brought
19 on or about December 7th, 2009.

20 The answer was, quote, The discovery
21 proceedings of bringing my attorneys to
22 (sic) various people that had nothing to do
23 with any of his clients or these lawsuits."

24 "Question: Which various people? Who?

25 "Answer: For example, he tried to

1 depose Bill Clinton strictly as a means of
2 getting publicity so that he and his firm
3 could fraudulently steal -- craft money from
4 unsuspecting investors in South Florida out
5 of millions of dollars."

6 Then it gets to the question about
7 Clinton, which I have already indicated the
8 question and answer.

9 And then he says, "There are people in
10 California. There are people in New York,"
11 as I have indicated earlier in my recitation
12 of the answer.

13 Then the next question by Mr. Scarola
14 was quote, Would you name them for us,
15 please? End quote.

16 Mr. Link?

17 MR. LINK: I have no specific
18 objection, Your Honor. Just my general
19 objections I made earlier.

20 THE COURT: Because it directly goes to
21 the issues contained in the malicious
22 prosecution claim, as well as the testing of
23 the allegations made by Mr. Epstein, I'm
24 going to find it to be relevant. I'm going
25 to find that a reasonable inference can

1 -- strike that -- that a reasonable
2 inference can be drawn from the Fifth
3 Amendment invocation, and it be an adverse
4 inference as well.

5 Next is 38, lines 23 through 25 through
6 page 39, lines 1 through six.

7 Question: "I had asked you earlier
8 whether you ginned up and crafted meant
9 fabricated and you asserted your Fifth
10 Amendment privilege. Are you now telling us
11 that there were claims against you that were
12 fabricated by Mr. Edwards?"

13 After asserting his Fifth, Sixth and
14 Fourteenth Amendment rights -- again, this
15 is according to Mr. Epstein -- I am taking
16 any position whether any of those other
17 rights apply. I am looking at this from a
18 Fifth Amendment perspective. He then
19 states, quote, I would respond that the
20 newspapers are very clear that the cases
21 were fabricated. End quote.

22 My inclination would be to permit it,
23 consistent with my other rulings regarding
24 this area of ginned up or fabrication.

25 Mr. Link?

1 MR. LINK: I am going to ask Your Honor
2 to take a look at the actual transcript to
3 put it in context. I believe the question
4 is more fully answered.

5 THE COURT: Sure.

6 MS. ROCKENBACH: I think it's page 38,
7 line 14 through 22. Mr. Epstein provides a
8 substantive answer with regard to multiple
9 cases, fabrication and fleecing investors.

10 I will also point out that it is, at
11 this point, cumulative, because the Court
12 has already allowed, repeatedly, Fifth
13 Amendment adverse inferences.

14 THE COURT: Well this is after a
15 discussion -- actually, it's just before a
16 discussion, which then gets into a question,
17 "Which newspaper said which cases were
18 fabricated?"

19 Answer: "Bob Norman's blog said most of
20 the cases were fabricated, to my best
21 recollection.

22 "The Scherer Complaint alleged
23 many fabricated cases, sir."

24 Then the question again states, quote,
25 Well, which of Mr. Edwards' cases do you

1 contend were fabricated?"

2 That's the next question that's at
3 issue.

4 The objections are overruled for the
5 reasons I stated earlier.

6 MR. LINK: Thank you.

7 I should clarify. I was assuming that
8 we, obviously, were going to designate parts
9 of the deposition so that they will be
10 played at the same time.

11 THE COURT: That's fine.

12 MR. LINK: Thank you, Judge.

13 THE COURT: Get with Mr. Scarola and
14 deal with that issue outside of my presence.

15 MR. SCAROLA: We will certainly be
16 playing all of that testimony on page 38
17 that's just been referenced to put the
18 assertions in context --

19 THE COURT: Right.

20 MR. SCAROLA: -- so the jury knows when
21 we're talking about fabricated cases,
22 Mr. Epstein is saying the cases that were
23 involved with the 13 boxes that got
24 delivered to Mr. Rothstein's office, those
25 happen to be Bradley Edwards cases. So

1 those are the cases he's saying were
2 fabricated.

3 THE COURT: I understand. But again,
4 put it in context -- for context reasons
5 and, obviously, pursuant to the rule of
6 completeness.

7 I'm conscious of that as well. I can
8 assure you that at least I will not
9 knowingly allow anything to be put into
10 evidence that's not in context or if it's
11 incomplete.

12 MR. LINK: Thank you, Judge.

13 THE COURT: Next is page 39, lines 21
14 through 25 to page 40, line 1. That is the
15 same ruling for the same reasons.

16 Page 40, lines 2 through 12, same
17 ruling for the same reasons.

18 Page 40, lines 17 through 21 that is,
19 again, going back to similar questions that
20 were at the beginning of this analysis where
21 now it gets to -- now it's being -- Jane Doe
22 is being discussed.

23 Question: "Did you ever have personal
24 contact with the person referred to by the
25 name Jane Doe in that lawsuit?"

1 Again, for the same reasons I indicated
2 earlier as to L.M., the same ruling, same
3 objections are taken and asserted and they
4 are overruled.

5 Same with the next question, page 40,
6 lines 22 through 25; on page 41, line 23;
7 the same with 41, lines 4 through 9; same
8 with 41, lines 10 through 19.

9 The next issue is page 42, lines 3
10 through 13. Question: "You have alleged in
11 your Complaint that there is a claim on
12 behalf of Jane Doe versus Epstein pending in
13 the Federal District Court of Southern
14 District of Florida. I would like to know
15 whether you ever had any physical contact
16 with the person referred to as Jane Doe in
17 that Complaint?"

18 Same ruling, same reasons, same
19 objections being overruled as related to the
20 similar question as is pertained to Ms. L.M.

21 Next is question, "Did you ever
22 exchange any money or gifts with Jane Doe?"

23 Same ruling. I'm allowing that, based
24 upon the reasons I gave earlier.

25 Next we get into E.W. Page 42.

1 "Do you know who E.W. is?"

2 Same ruling as related to L.M. and Jane
3 Doe for the reasons that the Court expressed
4 earlier.

5 Same ruling as it relates to how long
6 have you known E.W. As I related to L.M.
7 and Jane Doe, those rulings remain the same.

8 Question: How many times have you been
9 in physical contact -- strike that.

10 "How many times have you been in the
11 physical presence of E.W.?"

12 Same ruling, same objections as it
13 related to E.W. -- strike that -- as it
14 related to L.M. and Jane Doe.

15 Next is, "How old is E.W.?"

16 Answer: "I don't know."

17 Question: "How old was she when you
18 met her?"

19 Fifth Amendment is then asserted.

20 Again, because E.W. is a principal
21 feature of the claim made by Mr. Epstein
22 against Edwards, and it's one of the three
23 cases involved and relative to the strength
24 and weaknesses of that case, is one of those
25 that is being asserted here as to the reason

1 why Mr. Epstein may have filed the lawsuit
2 and the reason why Mr. Edwards filed the
3 malicious prosecution claim, it's relevant.
4 The Fifth Amendment invocation is respected.
5 However, the inference may be drawn against
6 Mr. Epstein in that question also.

7 Same ruling with regard to the next
8 question, page 44, lines 21 through 25 to
9 page 45 line 1. Same ruling for the reasons
10 expressed for L.M. and Jane Doe for E.W.

11 On page 45, lines 2 through 7, same
12 ruling as expressed for L.M. and Jane Doe
13 for the ruling regarding E.W. pertaining to
14 page 45, lines 8 through 16.

15 Same ruling -- strike that.

16 This is a different issue. And,
17 actually, my inclination was not to allow
18 this question to be asked.

19 MR. SCAROLA: Which one are we at?

20 THE COURT: Page 45, lines 17 through
21 24 of the proffer at the bottom of the page.

22 Quote: What is the actual value that
23 you contend the claim of E.W. against you
24 has? End quote.

25 MR. SCAROLA: Respectfully, Your Honor,

1 you will recall that one of the central
2 allegations of the Complaint is that these
3 were basically worthless claims. They were
4 being ginned up. Clearly it is a matter of
5 relevance as to what Mr. Epstein's position
6 was at the time that he made allegations
7 against Bradley Edwards that these were
8 ginned-up cases, what he thought the value
9 really was. How much were they worth? And
10 the answer could have been, They were
11 worthless. I have no opinion.

12 But when he says, I assert my right to
13 remain silent, the reasonable implication to
14 be drawn is that his truthful answer would
15 have contradicted the allegations that he
16 made in the Complaint against Bradley
17 Edwards.

18 THE COURT: Or it could constitute an
19 adverse inference towards Mr. Epstein's
20 position as it pertained to the relative
21 weakness or strength of the cases from
22 either side's perspective, as I pointed out
23 earlier.

24 MR. SCAROLA: I would also point out
25 that we have included in the motion the line

1 where Mr. Pike says, "Form. Relevance,"
2 that would not be offered into evidence.

3 THE COURT: I understand. Thanks.

4 Mr. Link.

5 MR. LINK: Only general objections,
6 Your Honor.

7 THE COURT: Okay. Then the objections
8 are overruled.

9 MR. LINK: I don't agree with
10 Mr. Scarola's characterization that he used
11 in the Complaint. I think the word we
12 focused on you said was weak. It does say
13 ginned up, fabricated. We have gone through
14 that. But I don't want to go through the
15 diatribe of it.

16 THE COURT: In my recollection, which
17 has been refreshed to some degree today,
18 that was Mr. Epstein's characterization of
19 the types of claims that were brought by
20 those three individuals that we have
21 repetitively identified.

22 MR. LINK: He said they were weak. The
23 fabrication related to what Rothstein was
24 doing.

25 THE COURT: Again, that can be

1 explained, that can be argued, that can be
2 raised through other witnesses or
3 Mr. Epstein himself.

4 Again, I'm getting to the issue of
5 Fifth Amendment invocation and its impact on
6 the malicious prosecution claim. And that's
7 the ruling of the Court.

8 And the same ruling would go to L.M.
9 and Jane Doe, the same adverse inference
10 being allowed as related to those questions
11 being page 46, lines 1 through 15.

12 We move to page 71, lines 12 through
13 17.

14 "Is there any pending claim against you
15 which you contend is fabricated?"

16 Let's go back and take the context of
17 that and see where we are.

18 MR. SCAROLA: Pre-settlement of L.M.,
19 E.W. and Jane Doe.

20 MR. LINK: True. It just doesn't say
21 that in the question, Your Honor.

22 THE COURT: But the plan is, as
23 Mr. Scarola has indicated, is to play the
24 edited portions that the Court has sustained
25 and anything that you all have agreed to can

1 be edited out, such as form objections and
2 that type of thing, but let it keep flowing.
3 Then --

4 MR. LINK: I am going to ask the Court
5 to take a look at the question, because it
6 doesn't limit it to the three cases.

7 THE COURT: Okay.

8 MR. SCAROLA: But it includes the three
9 then pending claims. So if his contention
10 is that any one of those claims is
11 fabricated, then he would say, Yeah, these
12 three claims were all fabricated.

13 THE COURT: I'm going to sustain the
14 objection. And the reason for Court's rule
15 is this. Because it is not specific -- and,
16 in fact, it says otherwise. In the
17 preceding question it reads on page 71, line
18 three: "Well I'm not limiting my question to
19 the three cases referenced in your
20 Complaint. I want to know whether you
21 contend that any claim against you has been
22 fabricated."

23 MR. SCAROLA: And in that regard, Your
24 Honor, again, we are looking at motive and
25 the impact and weight of all of the cases

1 that were being prosecuted against Jeffrey
2 Epstein. His belief that there was value in
3 all of the claims is relevant and material.
4 But by refusing to answer that any of them
5 were fabricated, he is expressly including
6 the three claims, because that's expressly
7 identified.

8 THE COURT: I understand. I, again,
9 believe in trying to make sure that the
10 Court is not taking any invocation of the
11 Fifth Amendment lightly, to have to try to
12 defend himself, meaning Epstein, at that
13 particular juncture to any pending claim
14 would, in my view, sustain his right to the
15 Fifth Amendment privilege, because then it
16 would have to go into detail.

17 If it was these three claimants alone I
18 wouldn't have a problem. But because it is
19 extremely broad, that overbreadth would not
20 probably be allowed as a live question, if
21 you will, in the courtroom if properly
22 objected to, and thus would be further
23 implications of the Fifth Amendment.

24 I find it to be overly broad and I
25 sustain the objection to that question.

1 MR. SCAROLA: Yes, sir.

2 We are at page 88, lines 19 through 25
3 and 89 lines 1 through 2.

4 THE COURT: Okay. Let's take a break.
5 I think it's a good time to do that.

6 What I would like to do is just go
7 ahead and hopefully get this done by about
8 12:30.

9 I would like to at least get through
10 the questions by then. I think it's doable.
11 We can take a few minutes to break and we
12 will see how much time we have to do the
13 interrogatories. If we don't, then we
14 don't. We will take that up at another
15 time. And that can be done through a
16 special set or a 15-minute hearing or
17 something along those lines. I will do my
18 best to provide the time.

19 All right, let's take a brief break.
20 And thanks again to our court reporter and
21 deputy for their assistance as well.

22 We will be in recess for about five
23 minutes.

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

1 THE COURT: Sure.

2 MR. SCAROLA: You mentioned,
3 repeatedly, setting shorter hearings. In
4 light of the fact that we are still a few
5 months away from trial, would it make sense
6 for us to try to get a larger block of time
7 so that Your Honor is able to focus with
8 some degree of continuity on these issues?

9 I'm thinking perhaps if you have a
10 non-jury calendar between now and then, if
11 you can give us a full day, that might --

12 THE COURT: We will look into it.

13 Off the record.

14 (A discussion was held off the record.)

15 (A recess was taken 11:50 a.m. - 12:04
16 p.m.)

17 THE COURT: Page 88, lines 19 through
18 25 through page 89, lines 1 through 2.

19 Quote: Did sexual assaults ever take
20 place on a private airplane on which you
21 were a passenger? End quote.

22 My inclination is to not allow that,
23 along with the number page 89, lines 4
24 through 10.

25 MR. SCAROLA: Your Honor may recall

1 that a specific focus of allegations in the
2 Complaint is that Mr. Edwards was engaging
3 in misconduct for the sole purpose of
4 enhancing the Ponzi scheme. And one of the
5 specific acts of misconduct was pursuing
6 discovery with respect to what was going on
7 on the airplanes, in spite of the fact that
8 Mr. Edwards' specific clients were not
9 themselves assaulted on the air planes.

10 Both state and federal law make those
11 other assaults clearly discoverable, and in
12 the case of federal law, clearly admissible
13 in evidence.

14 So this line of inquiry is obviously
15 relevant and material. If Mr. Epstein knew
16 that sexual assaults were taking place on
17 the airplanes, if he knew that there were
18 celebrities and dignitaries -- including
19 those specifically whom Mr. Edwards was
20 seeking to depose -- were on the planes at
21 the time that those assaults occurred, then
22 there's no way he can base his probable
23 cause for suing Mr. Edwards on the pursuit
24 of discovery that Mr. Epstein knew was
25 highly relevant and would lead to the

1 discovery of admissibility evidence.

2 So unless Your Honor is going to
3 preclude Mr. Epstein from making any
4 reference to those matters and Mr. Epstein's
5 counsel from making any reference to those
6 matters as allegedly supporting probable
7 cause, then we have to have the ability to
8 be able to rebut those contentions.

9 THE COURT: There's a big difference
10 between asking Mr. Epstein questions to the
11 effect of, Do you take issue with
12 Mr. Edwards seeking discovery? As part of
13 your lawsuit are you taking issue with
14 Mr. Edwards seeking discovery of flight logs
15 of what may have transpired on those
16 airplanes, if anything? than questions
17 boldly asserting, quote, Did sexual assaults
18 ever take place on a private airplane on
19 which you were a passenger? End quote.
20 That doesn't even suggest those were his
21 airplanes.

22 As well as the next question, "Does a
23 flight log kept for a private jet used by
24 you contain the names of celebrities,
25 dignitaries or international figures? End

1 quote.

2 So while I am understanding the need
3 for Mr. Edwards being able to have the
4 ability to prove a lack of probable cause
5 and malice, the questions themselves should
6 not boarder on -- the first one -- on -- let
7 me just leave it at that, and that is, I
8 believe that looking at this primarily from
9 a 403 analysis, and whether a malicious
10 prosecution claim, which we have to remain
11 focused, whether any probative value would
12 be materially outweighed by the prejudice.
13 I find that that analysis would be
14 applicable here, therefore, sustaining the
15 objection.

16 MR. SCAROLA: May I make one further
17 comment, Your Honor? And that is this.
18 Clearly these are predicate questions. And
19 if I can't even get a response to the
20 predicate questions whether any of these
21 celebrities were on his plane, as an
22 example, then how can I get to ask the
23 follow-up questions that go specifically to
24 the allegations that are included within the
25 Complaint?

1 And again, if he's not going to rely
2 upon -- if he's precluded because he chooses
3 to sanitize this case to the extent that we
4 are not going to get into any of these
5 things -- if he's not going to say that one
6 of the reasons why I believe Brad Edwards
7 was a knowing participant in this Ponzi
8 scheme was because he was pursuing discovery
9 about what went on on my airplanes and who
10 was there at the time, then I don't need to
11 ask these questions.

12 But if he's going to be allowed to do
13 it, these are predicate questions and to
14 getting into those details, and he refuses
15 to even answer those predicate questions.

16 THE COURT: And the ruling of the Court
17 remains as far as the question, quote, Did
18 sexual assaults take place on your private
19 airplane which you were passenger? End
20 quote.

21 They are far too broad and do not
22 specifically deal with issues pertaining to
23 this particular case, as I mentioned before.

24 The flight log issue, again, in terms
25 of the way the question is phrased, I don't

1 believe is something that is independently
2 admissible and should carry with it a Fifth
3 Amendment adverse inference.

4 Whether or not you choose to introduce
5 such evidence elsewhere or by other means is
6 not what I am suggesting here. It's solely
7 the questions that were asked. And to
8 elevate them to inference based upon the
9 invocation of the Fourteenth Amendment,
10 based upon the matter in which those
11 questions were asked and the form of those,
12 is the basis for the ruling.

13 MR. SCAROLA: That clarification is
14 helpful. Thank you, Your Honor.

15 THE COURT: The next issue is, quote,
16 Have you ever socialized with Donald Trump
17 in the presence of females under the age of
18 18?" I take the same position as I have on
19 these last two where I would sustain them.

20 Let me provide you with the reason, and
21 I will give you the opportunity to argue.
22 And that is, that the word socialize with
23 anyone in the presence of females under the
24 age of 18 -- socialize has and can have a
25 very benign connotation. People can

1 socialize after church in a church hall with
2 children and people anywhere from the age of
3 infancy to 101.

4 Whether it's Donald Trump or anyone
5 else --

6 MR. SCAROLA: Alan Dershowitz is the
7 next question.

8 THE COURT: -- conceivably it would be
9 the same response in Mr. Trump's --
10 President Trump, now stands the situation,
11 as the proprietor of Mar-a-Lago, there could
12 be numerous occasion where Mr. Epstein may
13 have been an invited guest and Mr. Trump's
14 own daughters, who may have been under the
15 age of 18 at the time were also invited
16 guests. Socializing carries with it many
17 different connotations.

18 Your position.

19 MR. SCAROLA: In which case there would
20 be absolutely no basis to assert a Fifth
21 Amendment privilege.

22 If Jeffrey Epstein were socializing at
23 a church hall with Donald Trump and
24 children, if he was socializing at
25 Mar-a-Lago with Donald Trump and children,

1 there could be to valid assertion of a Fifth
2 Amendment privilege.

3 It is only if there is a link between
4 that answer and the commission of a crime
5 that the assertion of the Fifth Amendment
6 privilege is valid. So by asserting a Fifth
7 Amendment privilege and not saying, Yes, I
8 have, or no, I never have -- by asserting a
9 Fifth Amendment privilege what Jeffrey
10 Epstein is saying is, I have socialized in
11 the presence of Donald Trump and children
12 under such circumstances as would provide a
13 link in the chain of establishing my guilt
14 in the commission of a crime.

15 And these are the specific people who
16 Jeffrey Epstein claims were inappropriately
17 included in discovery requests. They have
18 been referenced in his Complaint.

19 So the starting point is, did you ever
20 socialize with Donald Trump in the presence
21 of children? When did that occur? Where
22 did it occur? Who were the children? Were
23 any of those children the alleged victims in
24 these crimes? But we get cut off in asking
25 any of those questions when a Fifth

1 Amendment privilege is asserted to the
2 predicate questions.

3 So that's my response to the concern
4 that Your Honor has expressed. These are
5 specifically referenced in the Complaint.

6 And again, if there is to be no
7 reference to those allegations in the
8 Complaint as supporting a basis for probable
9 cause as to claims brought against Bradley
10 Edwards, then and only then do these
11 questions become irrelevant.

12 If there is any reference to it -- and
13 there has to be because the Complaint is
14 going to come into evidence. It is the
15 foundation of the malicious prosecution
16 claim. As soon as that's in, that's the
17 assertion that has already been made.

18 We don't have to wait for it to be made
19 when Jeffrey Epstein takes the witness
20 stand. He has said it in his Complaint.

21 THE COURT: Said what?

22 MR. SCAROLA: He has said that it was
23 seeking discovery from Donald Trump and
24 Tommy Mottola and Alan Dershowitz, which
25 forms the basis of his believing that there

1 was probable cause that Bradley Edwards was
2 a knowing participant in the Ponzi scheme.
3 Specifically, Your Honor, the references --
4 I have just been handed the Complaint. The
5 references appear at paragraph 38, page 14
6 of the Complaint.

7 "Edwards' office also notified
8 Defendant that he intended to take the
9 depositions of and was subpoenaing (i)
10 Donald Trump (real estate magnate and
11 business mogul); (ii) Alan Dershowitz (noted
12 Harvard Law professor, constitutional
13 attorney and one of Epstein's criminal
14 defense attorneys); (iii) Bill Clinton
15 (former President of the United States; (iv)
16 Tommy Mottola (President of Sony Record);
17 and (v) David Copperfield (illusionist).

18 "The above-named individuals" --
19 paragraph 39 -- "were friends and
20 acquaintances of Epstein with whom he
21 knew" -- and I'm reading that exactly --
22 "with whom he knew through business or
23 philanthropic work over the years. None of
24 the above-named individuals had any
25 connection whatsoever with any of the

1 litigation team's clients, E.W., L.M. or
2 Jane Doe."

3 So this is part of what he is alleging
4 was his probable cause for filing the
5 Complaint against Bradley Edwards.

6 It goes on to the next paragraph to
7 talk about the ridiculous and irrelevant
8 discovery that was being sought by Brad
9 Edwards.

10 So again, if they are going to abandon
11 those claims, if there is a stipulation that
12 that did not form the basis of any probable
13 cause to believe that there was improper
14 conduct on Bradley Edward's part, then
15 that's fine. But if they are going to
16 continue to contend that that forms the
17 basis, then we obviously get to talk to
18 Jeffrey Epstein about those things. And his
19 refusal to answer raises a reasonable
20 inference against him.

21 THE COURT: Okay. Mr. Link your
22 position.

23 Thank you, Mr. Scarola.

24 MR. LINK: Yes, sir.

25 None of those question were asked that

1 he just talked about. He didn't ask, Tell
2 me your view of what was being done
3 improperly by Mr. Edwards.

4 And for Mr. Scarola to say when
5 somebody raises the Fifth that I don't get
6 to ask additional questions on the topic --
7 they could assert the Fifth and he could
8 have asked all the questions he wanted to.

9 So there's nothing about this question,
10 Did sexual assault ever take place -- I'm
11 sorry -- Have you ever socialized with
12 Donald Trump, that should lead to any
13 inference of anything. It's vague, it's
14 overbroad, and has absolutely nothing to do
15 with the issues that are presented in the
16 Complaint, Your Honor.

17 THE COURT: All right, the last word I
18 will note is this, that I'm not only
19 sustaining the objection for the reasons
20 that I have indicated, but also, because of
21 the fact that all objections, except to
22 form, are preserved for the reasons that are
23 outlined by Mr. Link, I am going to sustain
24 those objections.

25 So we are going to move on, then -- and

1 it applies -- same question as applies to
2 Mr. Dershowitz, applies to Mr. Mottola,
3 implies to Mr. Copperfield.

4 The next issue is on page 17, page 95,
5 lines 16 through 25 through 96, lines 1
6 through 3. Question: "Have you ever
7 sexually abused children?" End quote.

8 Mr. Scarola.

9 MR. SCAROLA: Clearly goes directly to
10 Jeffrey Epstein's knowledge of the validity
11 of the claims against him by the three
12 individuals represented by Bradley Edwards.

13 But in addition to that, it is highly
14 probative with regard to motive, because the
15 more sexual abuse of children in which
16 Jeffrey Epstein engaged, the greater was his
17 motive to attempt to find some way in which
18 to avoid being held both civilly and
19 criminally liable for those assaults. So it
20 goes directly to the issue of malice and to
21 the issue of motive.

22 THE COURT: Mr. Link.

23 MR. LINK: Judge, this is one I didn't
24 even think I would have to argue, but could
25 there be anything more irrelevant and 403

1 prejudicial than to ask the question, Have
2 you ever sexually abused children?

3 It's not even limited to the three in
4 this case. There is this area that you
5 agreed should not come it, that's graphic --
6 that we are not trying to sanitize the whole
7 trial, but to ask the question and let the
8 jury hear, Have you ever sexually abused
9 children?

10 I can't imagine a more prejudicial
11 question and reading of a Fifth Amendment
12 answer to it, Your Honor.

13 THE COURT: Because of the overbreadth
14 of the question, the likelihood that I would
15 allow it to be asked and answered -- I
16 cannot stop it from being asked, but the
17 likelihood I would allow it to be answered
18 over objection would be slight. Probably I
19 would not. Therefore, I'm going to go ahead
20 and sustain the objection as to the nature
21 of the question.

22 I understand the position taken. And
23 it's actually a much closer issue than
24 Mr. Link is suggesting. But at the same
25 time, the breadth of the question is simply

1 without bound. Because it is outside of the
2 realm of L.M., E.W. or Jane Doe, I am going
3 to disallow the question.

4 MR. SCAROLA: May I respond? I am not
5 challenging the Court's ruling in any
6 respect. I understand that. But Your Honor
7 made reference to objections except as to
8 form being preserved. An objection as to
9 the overbreadth of the question is an
10 objection as to form. That's the only
11 observation I want to make for the record.

12 THE COURT: That may be. But again,
13 relevancy would also be involved here,
14 because of its lack of specificity as it
15 pertains to the three individuals at issue.

16 I believe I'm allowing the questions to
17 be asked of the three individuals.

18 MR. SCAROLA: You are, sir. Yes.

19 MR. LINK: Mr. Pike raised an objection
20 to form. It's right here in the transcript.

21 THE COURT: I see that. The ruling of
22 the Court remains the same. Thank you.

23 Next. Quote, Did you have staff
24 members that assisted you in scheduling
25 appointments with underage females, that is,

1 females under the age of 18? End quote.

2 Mr. Scarola.

3 MR. SCAROLA: This goes to the strength
4 of the claims brought by Bradley Edwards on
5 behalf of his three clients. There were, in
6 fact, other witnesses, including
7 Mr. Epstein's houseman, who were involved in
8 setting up the multiple daily appointments
9 that Mr. Epstein made with children for
10 purposes of abusing them.

11 THE COURT: Mr. Link.

12 MR. LINK: This question, even if you
13 read it, is a benign type of question. It's
14 like the word socialize, Your Honor. During
15 the course of his life -- there's no time
16 frame here.

17 This is like in the course of his life
18 has he ever scheduled appointments with
19 somebody that was under the age of 18 at any
20 time for any purpose, then to draw an
21 adverse inference from that doesn't flow.

22 Second, if the point is that it's to
23 show underage contact with females in a
24 sexual nature, it is not limited to the
25 three Edwards clients. But I don't think

1 you can draw that inference from the wording
2 that was chosen in the question. So it's
3 vague, it's prejudicial, it's not relevant,
4 and it's not the kind of question that
5 should cause this Court to give an adverse
6 inference, Your Honor.

7 MR. SCAROLA: And if that were true,
8 then Mr. Epstein did not need to assert his
9 Fifth Amendment privilege. If there were
10 circumstances where he was making
11 appointments for entirely benign purposes,
12 then the answer is yes. If it never
13 happened, the answer is no. And the only
14 basis for asserting a Fifth Amendment
15 privilege is if those appointments were
16 being made for purposes of procuring sexual
17 acts by minors.

18 THE COURT: Well, the interesting thing
19 about this one is similar to some of the
20 others, and that is that Mr. Epstein answers
21 the question at least in part, quote, So
22 long -- strike that.

23 "So along with many of the other claims
24 that the Rothstein firm crafted with
25 malicious claims against people like me and

1 others of a sexually charged nature in order
2 to simply fleece investors out of millions
3 of dollars in South Florida, these types of
4 questions, though I'd like to answer today,
5 at least this specific question, I'm going
6 to assert, unfortunately, my Fifth, Sixth
7 and Fourteenth Amendment right, though I'd
8 prefer to answer the question. End quote.

9 That partial answer, so to speak, is
10 relevant to the malicious prosecution claim.
11 And the context of which the question is
12 asked has already been formulated by virtue
13 of those questions, for example, relating to
14 Carolyn Andriano.

15 So the objection is overruled for the
16 reasons that I have cited earlier and just
17 now.

18 Next question. Page 104, lines 3
19 through 9 through 20. "How many minors have
20 you procured for prostitution?"

21 Mr. Scarola.

22 MR. SCAROLA: Your Honor, these
23 questions need to be taken in the context of
24 Mr. Epstein's inability to identify the
25 minor or minors who he pled guilty to

1 procuring for purposes of prostitution. And
2 it reflects upon the credibility of his
3 assertion that he can't remember who he pled
4 guilty to having procured for prostitution.

5 So it is in the entire context of that
6 line of questioning that these questions
7 become relevant and material. Was he
8 pleading guilty to having procured L.M. E.W.
9 and/or Jane Doe for prostitution? He can't
10 remember. And he then asserts his Fifth
11 Amendment privilege with regard to telling
12 us how many children he procured for
13 prostitution so that we can make a
14 determination as to whether it is credible
15 that he can't remember who it is he pled
16 guilty to and served substantial jail time
17 for having pled guilty to.

18 THE COURT: The relevance of that,
19 i.e., tends to prove or disprove a material
20 fact. What is the material fact that is at
21 issue?

22 MR. SCAROLA: The material fact is the
23 quality of the claims brought by L.M., E.W.
24 and Jane Doe. That is, it is our position
25 that he was pleading guilty to procuring

1 them for prostitution. And his refusal to
2 answer the question gives rise to a
3 reasonable inference that he was procuring
4 them for prostitution.

5 THE COURT: Those questions were not
6 specifically asked. I could see if you had
7 asked him whether or not he pled guilty to
8 procuring a minor for prostitution as
9 related to any of those three young females.
10 That would be different than the question
11 that was asked, quote, How many minors have
12 you procured for prostitution? End quote.

13 There are other questions that he has
14 answered. The jury can infer what they wish
15 to infer from the evidence. That question
16 is sustained -- the objection is sustained.

17 Next. "Yes, but my question wasn't
18 about what you pled guilty to. I just want
19 to know how many minors you have procured
20 for prostitution. End quote.

21 Same ruling applies to that question.

22 The next, page 106, lines 7 through 10.
23 Question, quote, I know -- strike that.

24 "I want to know whether you pled guilty
25 because you were, in fact, guilty. End

1 quote.

2 My inclination is to permit that
3 question to be asked.

4 Mr. Link.

5 MR. LINK: Your Honor, asking the
6 question, Did you pled guilty because you
7 were, in fact, guilty, how does that have
8 any relevance to the malicious prosecution
9 action? It is a 403 prejudicial question in
10 and of itself.

11 If you read that question, I don't
12 believe you would let that question be asked
13 in the courtroom.

14 You're allowed to ask somebody if they
15 have been convicted of a crime. But to then
16 say, So you were convicted of a crime
17 because you were, in fact, guilty of all of
18 the allegations that were in the information
19 and pled against you, that would never come
20 in, Your Honor, and it would be volitive of
21 403. That's what the inference would be
22 from this.

23 THE COURT: Mr. Scarola.

24 MR. SCAROLA: I don't have any further
25 argument, Your Honor. I think it's

1 obviously relevant.

2 THE COURT: I agree. I read the
3 context from which that question came. I
4 believe that it is in context, it does give
5 the jury a flavor of the way this deposition
6 was being conducted and responded to, the
7 combative nature of arguably both questioner
8 and responder.

9 And there are other times -- strike
10 that.

11 There will be times when people will
12 plead guilty for matters of convenience, for
13 matters of protecting others. There's a
14 myriad of reasons why there would be guilty
15 pleas taken and not simply because someone
16 was guilty of the crime that was committed.

17 MR. LINK: I understand.

18 May I make one more --

19 THE COURT: I think we have gone
20 through it as much as we need.

21 MR. LINK: I just want to clarify on
22 the record that we showed the Court the
23 colloquy. And the minor that was the
24 subject of the procurement charge was AD.

25 The Court asked whether it related to

1 the three that are involved in this lawsuit.
2 It did not.

3 THE COURT: It's not that I'm concerned
4 about that. What I'm concerned about in
5 this particular context goes back to the
6 strength and weakness of their respective
7 cases, when they were brought, and the
8 continuation of the claim that was brought
9 by Mr. Epstein against Mr. Edwards and the
10 timing of his guilty plea being all wrapped
11 up into relevant information that may or may
12 not have been the cause for him bringing the
13 cause and the defense -- the plaintiff's
14 claim -- malicious prosecution claim --
15 Edwards' claim the lack of probable cause.

16 MR. LINK: I understand the Court's
17 ruling.

18 THE COURT: Next. The quote, Have you
19 ever coerced, induced or enticed any minor
20 to engage in any sexual act with you?"

21 My inclination is to sustain the
22 objection.

23 Mr. Scarola.

24 MR. SCAROLA: I would point out, Your
25 Honor, the predicate to the assertion of the

1 Fifth Amendment right.

2 "A typical question from Mr. Scarola
3 representing Mr. Edwards and the firm of
4 Rothstein, who Scott Rothstein sits in jail
5 for crafting cases of a sexual nature
6 against people in South Florida, me and
7 others, the others yet to be determined."

8 So again, we are really going back to
9 one of the earlier questions where the
10 predicate made the difference to Your Honor.
11 I suggest the predicate here makes a
12 substantial difference as well. It shows
13 the malice and motive on the part of
14 Mr. Epstein to bring these claims against
15 Mr. Edwards.

16 MR. LINK: And the objection by
17 Mr. Pike was to form, which was there with
18 the other question, that the Court looked
19 at, and so you made the point that there was
20 a response.

21 But if there's a form objection, just
22 because there's a response doesn't make that
23 question valid, Your Honor. And this
24 question is invalid for the reasons that you
25 described. It is vague. It's not related

1 to the three folks in this case. It's
2 prejudicial. And I believe Mr. Pike's form
3 objection makes it different than the
4 Court's last ruling.

5 THE COURT: Well, Mr. Epstein chose to
6 answer the question, at least in part. Had
7 he simply refused to answer and assert a
8 Fifth Amendment privilege, as would have
9 likely carried the day on this question.
10 However, his choosing to do so may not have
11 impacted the claims as they related to
12 direct claims of L.M., E.W. and Jane Doe,
13 but the answer does directly impact upon the
14 issues of malicious prosecution. So I'm
15 going to allow it as asked and answered --
16 chosen to be answered by Mr. Epstein.

17 Next one. "How many times have you
18 engaged in fondling underage females?"

19 That is a question found at page 108,
20 lines 8 and 9. The witness Mr. Epstein
21 chooses to answer as follows, because
22 Mr. Pike allows him to do so.

23 "Again, as another one of the
24 irrelevant questions asked of (sic) this
25 lawsuit with respect as a client how I was

1 abused by the Rothstein firm for his -- the
2 practices, the abuse of the legal system,
3 the -- hopefully, the ladies and gentlemen
4 of the jury will be able to see through some
5 of these ridiculous questions with respect
6 to questions that day, at least, I must take
7 the Fifth" --

8 And he goes on and says, quote -- but I
9 believe are obvious (sic) to the ladies and
10 gentlemen of the jury what you're trying to
11 do here, Mr. Scarola." End quote.

12 Again, he has answered the question
13 that is germane to the malicious prosecution
14 claim. He has chosen to do that.

15 MR. LINK: I understand Your Honor's
16 ruling. And I would suggest, in light of
17 that ruling, that he's answered the
18 question. There should be no adverse
19 inference from any of the questions in which
20 there is an answer. In light of the Court's
21 ruling that that's why they are coming in,
22 you do not need the Fifth Amendment adverse
23 inference on those particular questions,
24 Your Honor.

25 MR. SCAROLA: Would you like a response

1 to that?

2 Do you need a response to that? is
3 probably a better question.

4 THE COURT: I would rather you respond.

5 MR. SCAROLA: My position in that
6 regard is that Mr. Epstein cannot make
7 self-serving speeches that are a partial
8 response to a question and then assert his
9 Fifth Amendment right so as to preclude any
10 follow-up to what he's saying. And that's
11 what he has done.

12 And the assertion of that Fifth
13 Amendment right to preclude any follow-up to
14 his self-serving speech does provide the
15 basis for drawing an adverse inference.

16 THE COURT: And that's the problem, is
17 he can't suggest to the jury -- he's doing
18 that directly in the portion that I have
19 read here -- how ludicrous this all is -- if
20 he used that word. He used the word
21 ridiculous -- to try -- to distance himself
22 as far as he can from this type of question,
23 but then at the same time saying, "I refuse
24 to answer that question on the grounds that
25 it may incriminate me."

1 MR. LINK: Yes, sir. Your ruling,
2 though, says he chose to answer the
3 question. If he didn't answer the question,
4 then his answer could be stricken and we
5 would go back to a simple Fifth Amendment
6 analysis.

7 It doesn't seem a balance to have it
8 both ways. Yes, it's coming in because he
9 chooses to answer it. But he's going to
10 have the Fifth Amendment adverse inference
11 because what he's given, as Mr. Scarola
12 says, is really a speech and not an answer
13 to the question.

14 So if it's not an answer to the
15 question, how then does that make the
16 question then relevant and available to the
17 jury?

18 THE COURT: Because --

19 MR. LINK: I know it's argument and not
20 a question, but I know you're going to
21 answer it for me.

22 THE COURT: I'm going to try. Because
23 on the one hand, he distanced himself using
24 the word ridiculous. How dare someone ask
25 me such a ludicrous question? But then in

1 the same breath, literally, appealing to
2 this jury -- after appealing to them -- in
3 fact, in between his appeals to the jury to
4 believe him when he says this is ridiculous,
5 at the same time in the same breath chooses
6 to invoke his Fifth Amendment right to
7 refuse to answer a question on the grounds
8 that it may incriminate him.

9 MR. LINK: Again, I have no problem
10 striking his answer --

11 THE COURT: That's the point that I am
12 trying to suggest to you. It's a
13 double-edge sword that he has attempted to
14 engage in here and to utilize that is
15 contrary to both positions.

16 In other words, he chose to answer
17 partially, and at the same time chose to
18 invoke his Fifth Amendment privilege, which
19 can be used adversely against him.

20 MR. LINK: Mr. Scarola has suggested he
21 didn't answer the question, and he did not,
22 in truth. He did give a speech.

23 But I think from the Fifth Amendment
24 standpoint, Your Honor, it should be the
25 focus on the question. And if you simply

1 look at the question, how does that question
2 help the jury make a determination of
3 probable cause or malice? It doesn't.

4 THE COURT: I have already answered
5 your question. Mr. Scarola has already done
6 so as well, so I am not going go further on
7 that.

8 Again, when he makes these types of
9 speeches, he is acting at his own peril, and
10 that is essentially the crux of the ruling
11 by the Court.

12 Next, quote, How many times have you
13 engaged in illegal sexual touching of
14 minors?"

15 Mr. Pike makes form and relevance
16 objections, and the witness picks up on that
17 by saying, quote, Again, an irrelevant
18 question to this lawsuit, strictly as a
19 continued attempt to bring in irrelevant
20 facts to the fact of what the Rothstein firm
21 has done to both me and others in South
22 Florida, defrauding investors of millions of
23 dollars, knowing that, at least today, I'm
24 going to have to, with respect to that
25 particular question, assert my Fourth --

1 excuse me -- Fifth, Sixth and Fourteenth
2 Amendment rights. End quote.

3 MR. SCAROLA: My argument would be the
4 same, Your Honor.

5 MR. LINK: My argument would be the
6 same, except that Mr. Scarola moved to
7 strike as unresponsive, so I do believe.

8 MR. SCAROLA: Will withdraw.

9 MR. LINK: I do believe, Your Honor, if
10 you're doing the balance and looking at the
11 question -- whether that question helps --
12 the simple fact that a witness gives a
13 non-responsive answer shouldn't convert the
14 question into one that should go before the
15 jury.

16 THE COURT: What I've said is -- and I
17 continue to take this position in terms of
18 the ruling that I have made -- and that is
19 that these statements made by Mr. Epstein
20 are, in my respectful view, clearly relevant
21 to the malicious prosecution claim: his
22 motive, his state of mind, whether or not he
23 acted with malice, whether or not there was
24 a probable cause issue associated with this.

25 Remember the context of a March 17,

1 2010 deposition taken months after and his
2 filing of the lawsuit in question. These
3 are all things that are relevant, tending to
4 prove or disprove a material fact or
5 element, that being probable cause and
6 malice, his reason for filling the suit in
7 the first place.

8 This information that he provided, he
9 provides a wealth of information to a jury
10 to draw conclusions or inferences. That's
11 the point I'm making.

12 MR. LINK: I understand your ruling. I
13 respectfully disagree that asking somebody
14 how many times you engage in illegal sexual
15 touching of minors has anything germane to
16 probable cause or malice, but I respect the
17 Court's ruling.

18 THE COURT: That's what I'm saying.
19 The inferences that a jury draws from this,
20 I think, are going to be relevant.

21 MR. LINK: I understand the Court's
22 ruling.

23 THE COURT: The next question. "Do you
24 have a personal sexual preference for
25 children?"

1 MR. SCAROLA: Your Honor, it will be
2 necessary, in order for you to rule on this,
3 for you to take a look at page 111. You
4 will see the ellipsis there, but what
5 precedes the assertion of the Fifth
6 Amendment right is relevant in light of the
7 Court's ruling that you have made.

8 So the answer actually begins at page
9 111, line 8 and goes through line 20.

10 THE COURT: The answer, again, was in
11 similar form. The Witness: quote, Another
12 totally irrelevant question to this lawsuit,
13 Mr. Edwards' behavior, in an attempt to
14 strictly divert attention from the
15 wrongdoing of the Rothstein firm in this
16 matter by asking sexually charged questions
17 in a case where the Rothstein firm has been
18 charged by the U.S. Attorney of fabricating
19 claims of a malicious nature, hiding behind
20 attorney-client privilege, forging
21 documents -- excuse me -- but as with
22 respect to these questions designed for
23 nothing more than to harass me.
24 Mr. Scarola, I'm going to have to take
25 Fifth, Sixth and Fourteenth amendment. End

1 quote.

2 MR. LINK: I don't want to test the
3 Court's patience with making the same
4 argument. That's my goal.

5 THE COURT: It is the same ruling.
6 When a witness chooses to introduce
7 critical -- potentially critical information
8 that directly relates to the malicious
9 prosecutions claim, which, by the way, was
10 the reason this deposition was taken, I
11 presume -- in other words, the deposition
12 was taken under this case number -- the
13 Epstein case number.

14 MR. LINK: Yes, sir.

15 THE COURT: It wasn't taken as a
16 byproduct of an L.M. deposition or an E.W.
17 deposition or a Jane Doe deposition or any
18 of the other young females involved in these
19 claims. This was taken as a direct reason
20 for the claim brought by Mr. Epstein in
21 conjunction with that -- obviously before
22 the malicious prosecution claim was
23 brought -- but in the Epstein lawsuit
24 against RRA, Edwards and L.M.

25 MR. LINK: So the Court knows, the

1 malicious prosecution case against
2 Mr. Epstein was filed 17 days after the
3 original Complaint. It was in play.

4 THE COURT: Okay, then that doesn't
5 really matter. I was just saying that --
6 the point I was making was that the
7 deposition was taken of Mr. Epstein as a
8 plaintiff in his case against RRA, Edwards
9 and L.M.

10 MR. LINK: And as a defendant.

11 THE COURT: Perhaps.

12 MR. LINK: Your Honor, I appreciate
13 your ruling. I just want this for the
14 record for clarification. But for the
15 witness making the decision to answer, you
16 would have granted the objection; is that
17 correct?

18 THE COURT: That's what we will need a
19 little bit more discussion on. And that
20 is --

21 MR. SCAROLA: May I suggest that it is
22 not necessary for Your Honor to reach that
23 issue and provide what is, in effect, an
24 advisory opinion? That is not an issue
25 before the Court. The answer is what the

1 answer is. Your Honor has ruled on that
2 answer.

3 THE COURT: My concern is the adverse
4 inference. The answer is going to come in.
5 It's whether, though, an adverse inference
6 can be drawn from those answers. And that's
7 what I'm concerned about, because again, we
8 talked about accountability and the like,
9 and that Mr. Epstein would have to live with
10 those responses, just like the allegations
11 that he made in his Complaint. And the same
12 with Mr. Edwards and his defenses and his
13 prosecution of the malicious prosecution
14 claim.

15 The problem comes in, though, when
16 trying to determine whether there should be,
17 in fairness to all, an adverse inference to
18 be derived because he decides to -- for lack
19 of a better word -- ruminate -- whether the
20 jury or opposing counsel -- how either
21 ridiculous these questions were or how
22 irrelevant these questions were with the
23 Court finding that those responses would be,
24 in fact, relevance to the malicious
25 prosecution.

1 So I'm going to have to take a look as
2 to these particular questions -- only these
3 generic, general questions, and see whether
4 or not they would carry with them Fifth
5 Amendment adverse inference aspects. So I'm
6 going to reserve on that, take that up at
7 another time.

8 MR. LINK: Thank you, Judge.

9 Would you like us to provide a short
10 bench memo on that issue before the hearing
11 from both sides?

12 THE COURT: Yes.

13 MR. LINK: We will do so.

14 THE COURT: The next one is probably
15 going to be similar. Let's look at it,
16 though. Still on 111, lines 23 through 24,
17 the question was asked -- Question, quote,
18 Have you ever acted on a sexual preference
19 for children?"

20 MR. SCAROLA: Your Honor, in light of
21 the Court's rulings with regard to the other
22 questions, I'm going to withdraw this. I
23 just don't need it. I suggest it falls
24 under the same category, but it's not
25 necessary to deal with that issue.

1 THE COURT: So withdrawn. Thank you.

2 The next one is, Question, "Your
3 Complaint at page 27, paragraph 49 says that
4 'RRA and the litigation team took an
5 emotionally driven set of facts involving
6 alleged innocent, unsuspecting, underage
7 females and a Palm Beach billionaire, and
8 sought to turn it into a gold mine.'"

9 Who is the Palm Beach billionaire
10 referred to in that sentence?

11 MR. LINK: Your Honor, if it helps, I
12 only have general objections to that.

13 THE COURT: Overruled. And the adverse
14 inference would be left.

15 The next page, 22. Page 113, lines 9
16 through 25, Question: "What is the
17 emotionally driven set of facts to which you
18 make reference in that sentence?" End
19 quote.

20 Any other objections?

21 MR. LINK: I believe he answered the
22 question fully and that there should be no
23 reason to have a Fifth Amendment adverse
24 inference from him providing a full answer.

25 MR. SCAROLA: My response to that is,

1 he obviously didn't provide a full answer.
2 It was something he chose to hide through
3 the assertion of the Fifth Amendment.

4 THE COURT: In this particular
5 instance, I feel comfortable in not only
6 allowing the answer to remain, but also to
7 permit the adverse inference as it's
8 directly related to the lawsuit brought by
9 Mr. Epstein.

10 Next is page 114, line 25 through 115,
11 line 13.

12 Question: -- and it's quoted within the
13 question -- "Rather than evaluating and
14 resolving the cases based on the merits,
15 that is, facts which included knowledgeable,
16 voluntary and consensual actions by each of
17 the claimants."

18 The question then goes, "What are their
19 names?"

20 The answer, quote, I think the
21 prostitutes' names were -- the prostitute
22 that you described before was L.M. With
23 respect to the others, I'm going to have to
24 claim the Fifth, Sixth and Fourteenth
25 Amendment, sir."

1 Okay, Mr. Scarola.

2 MR. SCAROLA: This is a direct quote
3 from the Complaint. We're asking him who it
4 is that you say were the knowledgeable,
5 voluntary and consensual --

6 THE COURT: Actions.

7 MR. SCAROLA: -- consensual persons who
8 actions were involved, yes. Who were the
9 claimants who were allegedly knowledgeable,
10 voluntary and consented in these actions.
11 And one of them he identifies as L.M. and
12 the others he refuses to identify on the
13 basis of his Fifth Amendment privilege. So
14 these are the claims he said were
15 fabricated.

16 THE COURT: Mr. Link.

17 MR. LINK: General objections only,
18 Your Honor.

19 THE COURT: Same ruling. I am going to
20 allow it in with the adverse inference
21 involved, since it, again, directly relates
22 to the claims that are brought
23 by Mr. Epstein and consequently the
24 malicious prosecution claim brought against
25 Mr. Edwards.

1 Page 115, lines 21 through 25 through
2 page 116, line 1.

3 Question, quote, Okay, so one of the
4 people that you're referring to is L.M., who
5 you've identified as L.M.; is that correct?
6 End quote.

7 Then he takes the Fifth.

8 MR. LINK: You want me to go first,
9 Your Honor?

10 THE COURT: I don't think you need to.
11 What would be the objection?

12 MR. LINK: Just it's vague and
13 confusing. I don't know what's the context
14 of it here. So one of people you are
15 referring to is L.M. -- who you have
16 identified as L.M.; is that correct?

17 Tie-in to the questions before?

18 THE COURT: Yes.

19 MR. LINK: Then I have no objection.
20 Just general.

21 THE COURT: Then they are overruled.

22 The next one is, "What are the
23 voluntary and consensual actions by L.M.
24 that you are referencing here?"

25 MR. LINK: General only, Your Honor.

1 THE COURT: Same ruling, since they
2 directly relate to the L.M. claim, and the
3 L.M. claim is directly stated and set forth
4 as weak -- one of the weak claims, et
5 cetera, and contains various accusations
6 against L.M., therefore will be directly
7 related not only to Mr. Epstein's Complaint
8 but also Mr. Edwards' malicious prosecution
9 claim.

10 Page 128, line 15 through page 129,
11 line 3, Question: quote, Is there anything
12 in L.M.'s Complaint that was filed against
13 you in September of 2008 which you contend
14 to be false?"

15 Same action?

16 MR. LINK: Same objection, Your Honor.

17 THE COURT: Same ruling.

18 MR. LINK: I think that concludes the
19 first deposition transcript.

20 Does Your Honor want to continue? It's
21 five to 1.

22 THE COURT: I think this is probably a
23 good time to break.

24 Thank you everybody for their kind
25 participation in both written and oral

1 presentations.

2 What I will do is I will see if there's
3 some time that's mutually available next
4 week that I can fit the rest of this in and
5 what remains as far as those things that
6 were listed in the outline.

7 It shouldn't take, hopefully, too much
8 of your time. I think we have gotten the
9 lion's share of material out of the way,
10 which I'm glad that we have.

11 Thanks again everybody for thee hard
12 work, including our court reporter and our
13 deputy as well.

14 I ask that you start preparing the
15 orders, conferring with each other on those
16 orders, conferring about the remaining
17 discovery based upon some of the information
18 I tried to impart and the basis for the
19 rulings that I've made, so you may be able
20 to save some additional time.

21 But in the meantime, as I said, I will
22 go about trying to give you some additional
23 time in this matter.

24 Some of the things can be handled on an
25 8:45. I saw a recent motion, for example,

1 to --

2 MR. SCAROLA: Permit request to
3 admissions --

4 THE COURT: Permit request to
5 admissions on the New York sex offender
6 issue, that can be on an 8:45.

7 MR. LINK: Your Honor, would it be
8 helpful if we look at everything that's
9 pending and give you a new letter that lists
10 what's pending and identify it for you?

11 THE COURT: I thank you for that.
12 Again, because of the unyielding number of
13 cases that we're dealing with and some of
14 the more heavily litigated cases, including
15 this one, it really does help me to keep
16 everything in focus and know what exactly
17 I'm facing so that I can give you sufficient
18 time.

19 MR. LINK: We will do that.

20 Thank you very much, Your Honor.

21 - - -

22 (The above proceedings were
23 concluded at 12:57 p.m.)

24

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COURT CERTIFICATE

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STATE OF FLORIDA)
 : SS
COUNTY OF PALM BEACH)

I, SONJA D. HALL, certify that I was
authorized to and did stenographically report the
foregoing proceedings and that the transcript is a
true record of my stenographic notes.

Dated this 11th day of December 2017.

SONJA D. HALL