

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

Case No. 502009CA040800XXXXMB

JEFFREY EPSTEIN,

Plaintiff/Counter-Defendant,

vs.

SCOTT ROTHSTEIN, individually;  
BRADLEY EDWARDS, individually,

Defendants/Counter-Plaintiffs.

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TRANSCRIPT OF PROCEEDINGS

DATE TAKEN: Wednesday, August 22nd, 2018  
TIME: 10:06 a.m. - 12:04 p.m.  
PLACE 205 N. Dixie Highway, Room 10D  
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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By KARA BERARD ROCKENBACH, ESQUIRE  
By SCOTT J. LINK, ESQUIRE

For Defendant/Counter-Plaintiff:

SEARCY, DENNEY, SCAROLA, BARNHART &  
SHIPLEY, P.A.  
2139 Palm Beach Lakes Boulevard  
West Palm Beach, FL 33409  
By JACK SCAROLA, ESQUIRE  
By DAVID P. VITALE JR., ESQUIRE

For Jeffrey Epstein:

ATTERBURY, GOLDBERGER & WEISS, P.A.  
250 Australian Ave. South, Suite 1400  
West Palm Beach, FL 33401  
By JACK A. GOLDBERGER, ESQUIRE

1 THE COURT: Good morning. Welcome. We  
2 are here -- I hoped that if I waited long  
3 enough maybe it would be nothing.

4 MR. LINK: We have an update to what  
5 you have. We are trying to force a  
6 reduction in paperwork for the judiciary.

7 THE COURT: Thank you.

8 I have the August 20th letter. It's  
9 the last letter I received from Mr. Link.

10 I did want to specially recognize the  
11 Link and Rockenbach firm -- not that the  
12 Searcy Denney firm didn't also do a good  
13 job -- but you did a particularly good job  
14 in organizing these materials. That really  
15 makes a big difference when it comes to  
16 preparing. So I thank you for taking that  
17 extra time. I know it takes quite a bit of  
18 time.

19 MR. SCAROLA: It's amazing what can  
20 happen when you have a client who is able to  
21 pay hourly fees.

22 MS. ROCKENBACH: Or a really diligent  
23 paralegal who we appreciate.

24 THE COURT: I take it more as a matter  
25 of respect for the Court in organizing the

1 material in such a way that it makes my job  
2 a lot easier.

3 So for whatever reason it may have  
4 happened, I appreciate the fact that it was  
5 done.

6 So a couple of things. Have a seat.  
7 Thank you all. When it comes to the  
8 deposition excerpts and objections, I am  
9 treating this case as I would any other case  
10 in that respect, and that is that I don't  
11 hear the questions and answers. I don't  
12 hear arguments on the questions and answers  
13 individually, meaning what I do during my  
14 own time is, I will review the deposition  
15 transcripts and I will rule accordingly,  
16 meaning that I will go through the  
17 deposition transcript, just like I would  
18 live testimony at trial, and not treat it  
19 any differently than we instruct the jury to  
20 treat deposition testimony as if the witness  
21 appeared at trial and considered as any  
22 other evidence during the trial.

23 So accordingly, that will save some  
24 time. If I do need argument on any  
25 individual questions, similar to what we

1 would do in trial, I will call a sidebar.  
2 In the setting that I am envisioning that I  
3 do in other cases, it would be before the  
4 jury comes out or at the close of the day,  
5 where I will take the deposition home. I  
6 will review the objected-to questions. And  
7 as I said, I will announce my rulings, of  
8 course, but only entertain argument as I see  
9 necessary as, again, I do during and would  
10 at the trial.

11 So that wouldn't be necessary to argue  
12 during this round of hearings. I will call  
13 a hearing and make time for it, if it's  
14 necessary.

15 MR. LINK: Good morning. Your Honor,  
16 Scott Link on behalf of Mr. Epstein. In  
17 preparing for today and thinking about doing  
18 the questions and the objections and looking  
19 at our objections, frankly, I think they are  
20 overdone. And we can save the Court some  
21 time by redoing them, frankly, and  
22 eliminating some of the objections and  
23 streamlining it for the Court.

24 THE COURT: That's fine. If you would  
25 like some time to do that, I will be more

1 than happy to allow a 20-day period for you  
2 to streamline those, and that will be  
3 helpful. Thank you.

4 MR. LINK: You're welcome, Judge.

5 THE COURT: So that's the way we will  
6 take care of that aspect of it, so I don't  
7 want anybody to worry about dealing with it  
8 during this period of time.

9 My thinking is that if we work hard  
10 today we can get this done today. I don't  
11 think we will need additional time beyond  
12 today.

13 Is your bankruptcy hearing still  
14 scheduled for tomorrow?

15 MR. SCAROLA: No, Your Honor. The  
16 bankruptcy hearing has been taken off as a  
17 consequence of various health problems that  
18 precluded us from completing the discovery  
19 necessary before the bankruptcy hearing can  
20 proceed.

21 The bankruptcy hearing is now set in  
22 October.

23 THE COURT: Okay. Thanks.

24 Has Mr. Epstein's deposition been  
25 taken?

1 MR. SCAROLA: No.

2 MR. LINK: It has not.

3 THE COURT: Has that been rescheduled?

4 MR. LINK: It has not. As part of the  
5 bankruptcy proceeding, Your Honor, it's been  
6 bumped, but I think we are in the process of  
7 rescheduling it.

8 MR. SCAROLA: Judge Ray has implemented  
9 the procedure that requires the exchange of  
10 direct testimony by way of affidavit in  
11 advance of the hearing.

12 There's also an exchange of exhibits.  
13 And that could not be completed until the  
14 depositions are taken. Those depositions  
15 were postponed as a consequence of, as I  
16 said, various health problems that resulted  
17 in us not being able to move forward.

18 THE COURT: Thank you for that  
19 information.

20 And as I mentioned, to the extent that  
21 my rulings may be impacted by Judge Ray's  
22 ultimate rulings, I do want to continue to  
23 make that known to the parties, and we will  
24 deal with that as necessary.

25 But again, as I said, I want to be

1 clear, I am not deferring to Judge Ray. I  
2 am simply going to review whatever findings  
3 that he may make pertaining to the issues  
4 involving the dissemination and copying of  
5 the subject disc involving the emails from  
6 the Rothstein law firm, and want his input  
7 as to the manner and methods by which that  
8 material was, in fact if at all,  
9 disseminated.

10 We know that there was some  
11 dissemination, since Mr. Link and  
12 Ms. Rockenbach have obtained the disc. But  
13 where it went from there and in the interim  
14 of where it may have been and who may have  
15 seen it, would be something that I am  
16 interested in.

17 My feeling is that Judge Ray would be  
18 adequately handling that aspect since it was  
19 his order that is allegedly being  
20 challenged.

21 All right. So what do we want to do  
22 first? I have here the issue of Edwards'  
23 notice of filing deposition transcript  
24 excerpts and discovery responses by Epstein  
25 implicating the Fifth Amendment. Part of

1 that was heard on December 7th, 17, but not  
2 completed.

3 Is that what we want to do first?

4 MS. ROCKENBACH: Your Honor, do you  
5 mind if I approach? I have an updated  
6 schedule for you. So there are two motions,  
7 Judge, that we have taken off in the spirit  
8 of the other motions that we took off. I  
9 believe they are 20 and 21. I crossed them  
10 off on there.

11 Item nine we have an agreed order. And  
12 with the Court's permission -- it relates to  
13 taking judicial notice for authenticity  
14 purposes. I will walk that up.

15 MR. VITALE: Mr. Link, was that 20 and  
16 22?

17 MR. LINK: I thought so.

18 MR. VITALE: I thought you said 21.

19 MR. LINK: Twenty and 22, Judge. I  
20 marked that off on the last page.

21 THE COURT: And you marked off the  
22 first one I just mentioned.

23 MR. LINK: I did. This was a different  
24 one.

25 THE COURT: I read it, but I didn't

1 mention it.

2 MR. LINK: That's the agreed order.

3 And with the Court's permission, we  
4 would like to address -- there's two items  
5 that involve the Fifth Amendment.

6 Mr. Goldberg will be talking about those.

7 He has volunteered -- I don't know if he  
8 volunteered, but he's sitting as the traffic  
9 magistrate after lunch today, so if we could  
10 take those up first before he rises to a  
11 level of semi-importance, that would be  
12 helpful.

13 MR. GOLDBERGER: I note the Court  
14 laughing.

15 THE COURT: Off the record.

16 (A discussion was held off the record.)

17 THE COURT: Back on the record. Let me  
18 orient myself, because the Palm Beach Post  
19 didn't bring a photographer today, which I  
20 was hoping, which is why I have this box  
21 here.

22 You have your cell phone camera? Can  
23 you take a picture of the box?

24 She'll indicate that the Judge had  
25 boxes of material to review.

1           Anyway, nice to see you, Jane. Thank  
2 you for being here with us as well.

3           Anyway, yeah, tell me where we are.

4           MR. LINK: Yes, Your Honor. That would  
5 be item 11. Edwards's motion to compel  
6 request for admission answers; and item  
7 three, the first half of it. I think item  
8 three will probably take longer than item  
9 11.

10           THE COURT: What I have is three,  
11 Edwards's notice of Epstein implicating the  
12 Fifth Amendment and attorney-client  
13 privilege.

14           MR. LINK: That's what we started on  
15 and didn't finish.

16           THE COURT: On December 7th?

17           MR. LINK: Yes, Judge.

18           THE COURT: And the second one was item  
19 11.

20           MR. LINK: Eleven, yes sir. Edwards's  
21 motion to compel.

22           THE COURT: I got it. Great.

23           MR. LINK: Which one would Your Honor  
24 like to start with?

25           THE COURT: I have reviewed thoroughly

1 item three, so I would rather start with  
2 that. If it dovetails together, then I will  
3 be better prepared for number 11.

4 MR. SCAROLA: Your Honor, excuse me.  
5 May I begin with some brief preliminary  
6 comments that I hope may be helpful?

7 THE COURT: Sure.

8 MR. SCAROLA: Thank you, Your Honor.

9 Your Honor, I have prepared an outline  
10 of what we, from Mr. Edwards's perspective,  
11 perceive to be the issues that need to be  
12 addressed. You will note that the first of  
13 those issues is, were the allegations filed  
14 by Jeffrey Epstein against Brad Edwards  
15 false. And clearly an essential element of  
16 a malicious prosecution claim is the filing  
17 of false allegations.

18 What appears beneath that letters A  
19 through Z are direct quotes from the  
20 complaint. These are --

21 MR. LINK: Your Honor, may I interrupt  
22 and object for just one moment please?

23 This is obviously an opening  
24 statement-type presentation with the press  
25 that is here to hear it. And as we talk

1           about the motions that we have prepared for,  
2           if some of this relevant, the Court can hear  
3           it. But the Court is very familiar with  
4           this case. And I don't think that behooves  
5           us for us both to stand up and make  
6           press-like opening statements, Your Honor.

7           THE COURT: Well, I am not suggesting  
8           anyone is pandering to the press, but I  
9           don't really see the need to go through the  
10          elements. I think that they can be  
11          integrated with the arguments that you are  
12          going to make in response to or in support  
13          of the motions that have been made, so I'm  
14          going to wait on this.

15          I want to conserve our time as best we  
16          can and remind you that, again, this is but  
17          one of over 1,500 files that I am handling,  
18          which I have myriad amounts of work to do on  
19          other cases that, unfortunately -- whether  
20          by happenstance, luck or otherwise -- the  
21          higher-profile cases seem to gravitate to  
22          this division. So I have a lot of work to  
23          do.

24          So I would prefer -- Mr. Scarola, while  
25          I appreciate your preparation -- and this

1 will come in handy, I think, during the  
2 respective arguments -- that we handle this  
3 in a way that I've chosen, and that is, to  
4 deal with the motions that are before me and  
5 that are scheduled, and I presume to have  
6 been, at least impliedly, agreed to by the  
7 parties and by counsel.

8 So I am going to hold off, then, on any  
9 type of introductory commentary and ask that  
10 you integrate it with the motions that have  
11 been brought.

12 MR. SCAROLA: Yes, sir. I would only  
13 point out to the Court it was not my  
14 intention to read this to Your Honor, nor to  
15 make public statements about it. But one of  
16 the principal concerns that Your Honor  
17 expressed during the lengthy hearing that we  
18 began on this motion, but did not finish, is  
19 addressing the relevance of the questions  
20 that were asked.

21 THE COURT: I'm aware.

22 MR. SCAROLA: And in that spirit, I  
23 thought it would be helpful if we identified  
24 specifically each of the elements that will  
25 be the subject of dispute at the upcoming

1 trial.

2 And that's what this does. It simply  
3 outlines the issues that will be addressed  
4 by the Court and by the jury. And I thought  
5 that it would be helpful if we all had this  
6 in front of us. If there's some  
7 disagreement about it, that that  
8 disagreement be addressed so that we are  
9 working with a common understanding of what  
10 this trial is going to be about.

11 So with that -- and that's the only  
12 preface I will make -- I have given it to  
13 Your Honor for whatever value it may have.

14 THE COURT: Thank you again.

15 All right, Mr. Goldberger, let's go  
16 ahead and start with the issue regarding the  
17 Fifth Amendment and the attorney-client  
18 privileges.

19 MR. GOLDBERGER: I'm seeking some  
20 clarification as to whether Mr. Scarola and  
21 his team are objecting to our invocation of  
22 the Fifth Amendment on any of these  
23 questions that are contained in the motion.

24 That's my role here today, if someone  
25 is contesting whether we can invoke the

1 Fifth Amendment or not, to explain why we  
2 are so doing.

3 I'm not sure -- there are other  
4 objections to the deposition questions. Of  
5 course, I am only going to take those up as  
6 you just indicated you would.

7 THE COURT: Why don't I shape the issue  
8 as I now understand it and ask Mr. Scarola  
9 for a brief commentary in that regard.

10 There has been a stipulation filed that  
11 Mr. Epstein will not be attending nor  
12 testifying at trial, as I understand it.

13 MR. LINK: That's correct, Judge.

14 THE COURT: So with that in mind, this  
15 issue becomes one of direct evidence as  
16 opposed to utilizing it in the form of  
17 impeachment.

18 So the landscape has been manifested by  
19 Mr. Epstein's decision in that respect.

20 Mr. Scarola, your position, please,  
21 briefly.

22 MR. LINK: Your Honor, can I just  
23 clarify for one second?

24 THE COURT: Sure.

25 MR. LINK: And it's because of the

1 nuance of the severed trial. Our notice is  
2 he won't be testifying in the severed trial,  
3 Mr. Edwards's claims against him, but did  
4 not address his claims against  
5 Mr. Rothstein.

6 THE COURT: Right. I'm talking now  
7 about the trial that's set here that I'm  
8 understanding to be only the case brought by  
9 Mr. Edwards against Mr. Epstein on the  
10 malicious prosecution claim.

11 MR. LINK: That's exactly right, Judge.

12 THE COURT: That's what we will be  
13 talking about throughout the process, so  
14 that there's no confusion, unless otherwise.

15 All right, Mr. Scarola, your  
16 intentions.

17 MR. SCAROLA: Yes, sir, Your Honor.

18 Your Honor referred to this as a  
19 stipulation. And I want to make sure  
20 that --

21 THE COURT: I will use the term  
22 declaration.

23 MR. SCAROLA: Thank you, sir. I think  
24 that that's an important clarification. We  
25 understand that a declaration has been made

1           that Mr. Epstein will neither voluntarily  
2           attend nor voluntarily testify.

3           That does not preclude us from choosing  
4           to call him, noticing his appearance and  
5           choosing to call him, if we want to do that.  
6           That is not a decision that has yet been  
7           made, although, I want to be sure that it's  
8           understood that we have that right and may  
9           choose to exercise it. I don't know that we  
10          will.

11          The direct response to Mr. Goldberger's  
12          question as to whether we are contesting  
13          Mr. Epstein's right to assert his Fifth  
14          Amendment privilege, we recognize the fact  
15          that Mr. Epstein remains in criminal  
16          jeopardy. Mr. Epstein does have a Fifth  
17          Amendment right as a consequence of  
18          remaining in criminal jeopardy. So we do  
19          not contest his ability to assert his Fifth  
20          Amendment privilege.

21          That may not be appropriate in  
22          particular circumstances. But generally, he  
23          has a Fifth Amendment right.

24          MR. GOLDBERGER: So with that in  
25          mind -- if there's a specific question that

1 was asked -- I think we are up to the  
2 January 25th, 2012 deposition -- if there is  
3 a specific question that Counsel suggests  
4 that Mr. Epstein did not have a right to  
5 invoke his Fifth Amendment privilege, I  
6 could address that particular question at  
7 this time.

8 THE COURT: No. I don't think that  
9 Mr. Scarola is questioning that. I think  
10 that what his intention is going to be,  
11 without him saying it directly -- but if I'm  
12 not letting the cat out of the bag -- is  
13 that there's definitely going to be the  
14 utilization of this deposition testimony  
15 before the jury with the time-permitting  
16 utilization of the Fifth Amendment and other  
17 privileges that are asserted.

18 That is in line with the case law that  
19 says if someone is going to maintain their  
20 Fifth Amendment privilege, that the Court  
21 can wait until jeopardy is no longer  
22 attaching and hence that information can be  
23 disclosed to the jury and the jury can use  
24 it any way they see fit.

25 MR. GOLDBERGER: I think we all

1 understand exactly that's the playing field.  
2 There may or may not be an adverse  
3 inference, depending on how the Court rules  
4 on what comes out of the invocation. I  
5 think we are all kind of saying the same  
6 thing at this point. He is going to invoke  
7 his Fifth Amendment privileges.

8 THE COURT: To be honest with you, when  
9 I was reading this, it didn't really give me  
10 much to chew on, because it just -- it just  
11 relates the objections, and it doesn't  
12 suggest to me whether or not you want me to  
13 rule on anything having to do with this. It  
14 just sets forth everything that's in here.

15 You know, I don't know what you want me  
16 to say. We were in a different posture  
17 before, because there had been no  
18 declaration of Mr. Epstein not going to  
19 testify.

20 So, frankly, until I happen to notice  
21 it in the press, I had no idea that he had  
22 no plans to be here. That was never  
23 disclosed to me, and I didn't have any  
24 inkling that that was going to happen.

25 So at this stage, we are at a much

1 different posture, because, again, my false  
2 assumption that he was going to be  
3 testifying.

4 At this point, all that's really in  
5 front of me is a regurgitation of the  
6 selected portions of his deposition and, I  
7 believe, interrogatories as well, if I  
8 remember correctly -- interrogatories and  
9 interrogatory answers that Mr. Scarola, I  
10 believe, is going to use and publish to the  
11 jury. And there needs to be a ruling as to  
12 adverse inference, but I don't have that  
13 here in front of me.

14 MR. GOLDBERGER: Yes. If, in fact,  
15 someone is saying, Hey, Mr. Epstein, you did  
16 not have the right to invoke your Fifth  
17 Amendment privilege for this particular  
18 question, this interrogatory, this request  
19 for admission, then I would be happy to  
20 address that.

21 It is what it is right now. He has  
22 invoked his Fifth Amendment privileges and  
23 the Court is going to have to make rulings  
24 as to what effect that is.

25 MR. LINK: Your Honor, if I may, I

1 think if you look at the other motion that I  
2 identified, the request -- the motion on the  
3 request for admissions where they're moving  
4 to compel answers, where the objections to  
5 the request to admission is the Fifth  
6 Amendment objection -- I think that Your  
7 Honor is in a slightly different posture  
8 than where we are at today.

9 I think with the Court's instruction to  
10 us earlier, everything that is contained in  
11 binder three is subject to the Court's  
12 review to determine whether the  
13 objections -- which include, by the way,  
14 Your Honor, relevance and 403 for some of  
15 the interrogatories that talk about various  
16 activities that we don't think are relevant  
17 to the proceeding. But I think these all  
18 fit within that category of Your Honor's  
19 study time, frankly, other than item three.

20 THE COURT: I mean, I read it. And I  
21 was excepting something to be at the end  
22 that says we want a ruling on something.

23 But, again, like I said, it was just --  
24 and I don't mean to use the word  
25 regurgitation in a pejorative manner. I'm

1 just saying that that's basically all it  
2 was.

3 And it's a notice of filing deposition  
4 transcript excerpts by Mr. Scarola -- by  
5 Mr. Edwards's and Mr. Scarola's office.

6 MR. SCAROLA: Your Honor, the  
7 procedural history is that the issues with  
8 regard to assertion of Fifth Amendment  
9 privilege were brought up before Your Honor,  
10 and Your Honor directed us to identify each  
11 of those areas where the Fifth Amendment  
12 privilege was asserted with the anticipated  
13 opportunity for the Court to rule in advance  
14 as to whether these assertions of privilege  
15 related to material that Your Honor  
16 considered to be relevant to the issues that  
17 are being presented before the jury, whether  
18 that relevance is outweighed by some  
19 prejudicial value, and -- and the extent to  
20 which the assertions of privilege will give  
21 rise to an adverse inference.

22 And Your Honor has, in fact, ruled  
23 repeatedly that not only are specific  
24 questions relevant, material and admissible,  
25 but that the assertion of the Fifth

1 Amendment privilege will give rise to an  
2 adverse inference.

3 You directed us to consider a jury  
4 instruction that would be given in  
5 connection with that assertion. And we have  
6 prepared such an instruction and submitted  
7 it to the Court. I will be happy to provide  
8 Your Honor with another copy of that.

9 But it follows the mandate of the  
10 Baxter decision, which basically says you  
11 cannot prove an element of your civil claim  
12 based solely upon an adverse inference  
13 arising from a Fifth Amendment privilege  
14 assertion.

15 However, the Fifth Amendment privilege  
16 assertion can give rise to an adverse  
17 inference that is considered in connection  
18 with other evidence presented in order to  
19 determine whether that element has been  
20 satisfied in the proof of the claim.

21 So that's exactly what our instruction  
22 says. I will pull that out and provide it  
23 to Your Honor, because it might be helpful  
24 to have that in front of you as well.

25 THE COURT: Thank you. I mean, I had a

1 lot of transcripts to read. I didn't see  
2 the transcript relating to this particular  
3 prior hearing so --

4 MR. LINK: Your Honor, could I --

5 THE COURT: I didn't recall exactly how  
6 far we got on it.

7 MR. LINK: I believe we actually  
8 submitted competing --

9 MR. GOLDBERGER: I'm not sure of that,  
10 quite honestly. I just asked Mr. Scarola.  
11 He does not think we submitted --

12 MR. LINK: In any event, we are not in  
13 disagreement, Your Honor. I think we may  
14 have had a change to it. But I don't  
15 remember, frankly at this point, if we  
16 agreed on what the change will be. But I  
17 certainly agree that the Court ruled that  
18 you were going to give an instruction and --

19 THE COURT: I did. That, I recall.

20 MR. LINK: -- then you will make that  
21 decision.

22 I think what the Court has said is  
23 absolutely true. What we are missing at  
24 this point is for the Court to review, for  
25 example, the interrogatory questions and

1 determine whether our other objections --  
2 based on relevancy and 403 and other  
3 things -- if you sustain those, then the  
4 Fifth Amendment privilege doesn't come into  
5 play.

6 The Fifth Amendment privilege will only  
7 come into play once the Court makes a  
8 determination on the depo transcripts that  
9 you have indicated how you will do it. I  
10 suggest interrogatories and request for  
11 admissions follow the same pattern, or we  
12 can argue them.

13 But the one motion, Your Honor, is  
14 slightly different. But I think everything  
15 in that binder that Mr. Scarola sent to you  
16 fits within the category of he's not  
17 contesting our ability to say Fifth  
18 Amendment. It's our other objections that  
19 the Court must rule upon.

20 THE COURT: That's fine. So let's --  
21 as long as I'm oriented with what you want,  
22 I'm glad to help you. It's just that if you  
23 look through item number three, it really  
24 doesn't say anything other than refer to --  
25 and outline the different excerpts and the

1           interrogatories as to where the Fifth  
2           Amendment and other privileges and other  
3           objections were asserted.

4           MR. SCAROLA: Your Honor, there is one  
5           area where we do not believe the assertion  
6           of the Fifth Amendment privilege is  
7           appropriate, and that relates to  
8           Mr. Epstein's response to our requests for  
9           admissions concerning his filings with the  
10          New York State sex offender registration.

11          There clearly is no Fifth Amendment  
12          privilege with respect to matters that  
13          Mr. Epstein has openly and publicly  
14          acknowledged. That is not a proper  
15          assertion of privilege.

16          His response with regard to the  
17          authenticity of that filing is clearly  
18          evasive. He should be compelled to admit  
19          that it is authentic or deny it, and we will  
20          go to New York and we will take a deposition  
21          to establish the authenticity of that  
22          document. And he cannot deny having made  
23          these admissions to the state of New York.  
24          He cannot deny a requests for admission on  
25          the basis of Fifth Amendment privilege.

1 That's been waived.

2 THE COURT: Let not get off on  
3 tangents. That's number 11. I want to  
4 start with number three and where we left  
5 off so I can finish the rulings as to the  
6 interrogatories and the deposition  
7 testimony. We will get to number 11 right  
8 after we finish number three.

9 MR. SCAROLA: We are on page 24, then,  
10 Your Honor, of the notice of filing, which  
11 delineates the specific questions and  
12 answers where Fifth Amendment privilege was  
13 asserted. This relates to the deposition of  
14 January 25, 2012.

15 MR. GOLDBERGER: Your Honor, if I  
16 understand the Court's ruling earlier today,  
17 you are not going to deal with 403  
18 objections, you're not going to deal with  
19 relevance. You only want to deal with --

20 THE COURT: No. I'm going to deal with  
21 everything.

22 MR. GOLDBERGER: Okay, fine.

23 THE COURT: What I mentioned earlier is  
24 that, in the generic deposition -- and  
25 nothing here is generic -- what I was going

1 to say is, in the usual and customary  
2 deposition designations and objections, I  
3 will do that on my own time, similar to what  
4 I do during trial, which is usually when I  
5 am confronted with materials, I take those  
6 home or I will do that, if I have some time,  
7 in the office. And I will rule on those and  
8 will announce my rulings to you at a  
9 separate hearing. And if I need any  
10 argument as to individual questions or  
11 objections, I will be glad to entertain it.

12 There may be instances where you will  
13 ask me to -- for further argument and I will  
14 decline, as I would in a trial setting. But  
15 that's what I was talking about,  
16 generically. Not this.

17 So let's go back to where we were then.  
18 You said the -- we have dealt with the  
19 March 17th, 2010 deposition. We are on --

20 MR. GOLDBERGER: Heading two, the  
21 January 25th, 2012 deposition.

22 MR. SCAROLA: The page numbers are in  
23 the upper-left-hand corner.

24 THE COURT: Which page is it?

25 MR. SCAROLA: It's page 24 of 36.

1 THE COURT: All right. I found it.

2 Thank you.

3 So we have, then -- we go to -- on page  
4 eight; is that correct?

5 MR. GOLDBERGER: Yes, Your Honor.

6 THE COURT: The first one is, quote,  
7 Did you, in fact, commit those acts?

8 The preceding questions are, quote,  
9 Have you been convicted of a crime?

10 Answer: "Yes."

11 Question: "What was the crime of which  
12 you were convicted?"

13 Answer: "Two counts. One is soliciting  
14 prostitution and procuring a minor for  
15 prostitution."

16 Question: "Did you, in fact, commit  
17 these acts?"

18 Mr. Goldberger invokes the Fifth  
19 Amendment privilege and Mr. Epstein follows  
20 by invoking the same.

21 MR. GOLDBERGER: We continue to invoke  
22 our Fifth Amendment privileges, Your Honor.

23 As Mr. Scarola set forth when he was  
24 addressing the Court, we are in jeopardy on  
25 potential --

1 THE COURT: I'm not questioning that.

2 MR. LINK: The objection was relevance  
3 and 403 prejudice to that question.

4 THE COURT: The objection is overruled.  
5 Those objections are overruled.

6 MR. GOLDBERGER: Your Honor, however  
7 for the sake of when this case is presented  
8 to the jury, that same question was asked in  
9 the first deposition and the Court ruled on  
10 that in our first hearing.

11 THE COURT: I am not going to allow  
12 repetition, just so the record is clear. I  
13 don't anticipate experienced counsel  
14 repeating the same information, even if it  
15 was taken in two different depositions.

16 If there were different answers, then  
17 it would be a different story. Same  
18 invocation, I don't expect repetition.

19 MR. LINK: If Your Honor looks at the  
20 next series of questions and answers through  
21 the next page, we have the same exact  
22 objections, Your Honor, of relevance and 403  
23 prejudicial, if that helps you take a look  
24 and rule.

25 MR. GOLDBERGER: And at a prior

1 hearing, Your Honor sustained the objection  
2 based on the fact that it was limited to  
3 three prior victims.

4 Your Honor said dealing with the three  
5 named victims, you would overrule the  
6 objection. But you sustained it on page 109  
7 as of our last hearing.

8 THE COURT: Okay. Now, the first two  
9 questions, the objections as to relevancy  
10 and prejudice versus probative would be  
11 sustained.

12 As to question, quote, Who is the  
13 prostitute that you solicited for  
14 prostitution with respect to the claim on  
15 which you were convicted? And quote, Who is  
16 the minor that you solicited for  
17 prostitution with respect to the claim in  
18 which you pled guilty. Those objections are  
19 overruled.

20 However, the invocation of the Fifth  
21 Amendment, which is subsumed in the answer,  
22 would be permitted. And hence, it would  
23 simply be responded to as, quote, I am going  
24 invoke my Fifth Amendment right to those  
25 questions.

1           Page 12, line 16.

2           Question: "Where was it that you  
3 solicited" -- strike that.

4           "Where was it that you solicited for  
5 prostitution the matter -- in the matter you  
6 pled guilty?"

7           I am reading that verbatim. I don't  
8 understand the question.

9           MR. SCAROLA: It's asking for the  
10 location of that offense, Your Honor.

11          THE COURT: The objection is sustained  
12 for relevance.

13          Next question. "When was it that you  
14 solicited the prostitution in the manner in  
15 which you pled guilty?"

16          I sustain the objection on relevancy  
17 grounds.

18          Question -- the next -- "Have you ever  
19 discussed your sex-related arrest or  
20 conviction with any reporter or news media  
21 representative?"

22          I'm also going to sustain as  
23 irrelevant.

24          MR. SCAROLA: May I be heard with  
25 regard to that one?

1           THE COURT: Sure. Are you going to  
2 tell me something to do with the New York  
3 Post article?

4           MR. SCAROLA: Yes, sir. I am going to  
5 tell you that. And I'm also going to tell  
6 you that it is clearly a question reasonably  
7 calculated to lead to the discovery of  
8 admissible evidence. If he -- and to  
9 determine the validity of the Fifth  
10 Amendment assertions.

11           If he is making statements to reporters  
12 about these matters, we are entitled to find  
13 out who it was he spoke to and what he said,  
14 and to make a determination as to whether  
15 what he said constitutes a waiver of Fifth  
16 Amendment privilege. So I suggest to you  
17 that it clearly is reasonably calculated to  
18 lead to the discovery of admissible  
19 evidence.

20           The assertion of the Fifth Amendment  
21 right cuts off our ability to do that. We  
22 should be able to point that out to the  
23 jury.

24           THE COURT: This is not a motion to  
25 compel. I am making ruling as what would be

1           admissible at trial. And the nature of that  
2           question the Court finds to be irrelevant to  
3           publish before the jury.

4           So we move down to --

5           MR. LINK: Twenty-six of 36, Your  
6           Honor.

7           THE COURT: And I believe the next  
8           question is, quote, Have you ever discussed  
9           your sex-related activities with minors in  
10          the state of Florida with any reporter, news  
11          media representative?

12          I'm going to make the same objection.  
13          Strike that.

14          I am going to make the same ruling on  
15          relevancy grounds for the purpose of  
16          publishing the question to the jury.

17          Next is page 21, lines 6 through 22 of  
18          that deposition.

19          Question: "Were the allegations in the  
20          federal complaint on behalf of [REDACTED]. any  
21          different than the allegations in the state  
22          court case on behalf of [REDACTED].?"

23          The answer is, "I don't recall."

24          Are you objecting to that?

25          MR. LINK: No, Your Honor.

1 THE COURT: Next question, "Did you, in  
2 fact, engage in any sexual conduct with  
3 [REDACTED].?"

4 He begins to answer, but then says he  
5 will take the Fifth Amendment.

6 Mr. Scarola.

7 MR. SCAROLA: This is one of the three  
8 victims. This is the claim that Jeffrey  
9 Epstein alleges was fabricated. This is the  
10 claim that he alleges was ginned up. This  
11 is the claim that he alleges had no value.  
12 So I'm not --

13 Is it relevance and materiality that  
14 the Court is concerned with at this point?  
15 Because it's hard for me to imagine how it  
16 could be more directly relevant to the  
17 falsity of the allegations that Mr. Epstein  
18 made against Brad Edwards when he says that  
19 these claims were fabricated.

20 THE COURT: All right. Mr. Link.

21 MR. LINK: Yes, sir. Your Honor, I  
22 don't want to parse words about the  
23 complaint. We looked at it so many times.  
24 Mr. Epstein never said these claims were  
25 fabricated.

1           We have looked at that language  
2 together. Mr. Scarola says it at every  
3 hearing. He said the claims were used to  
4 fabricate settlements by Mr. Rothstein. The  
5 statement in the complaint was that the  
6 claims were weak as compared to the dollar  
7 amount Mr. Rothstein was saying. I think  
8 this question is vague. I don't know what  
9 kind of sexual conduct we are talking about.

10           This is not [REDACTED]'s case against  
11 Mr. Epstein. This is Mr. Edwards's case  
12 against Mr. Epstein. So I don't see how  
13 this question is relevant to the jury. I  
14 also believe it's prejudicial, and I also  
15 believe it's vague and should not come in.

16           MR. SCAROLA: Mr. Link and I have a  
17 very different understanding about  
18 Mr. Epstein's testimony regarding these  
19 claims having been fabricated, and a very  
20 different understanding about what the  
21 complaint says about these claims having  
22 been fabricated. Regardless of whether he  
23 says they were fabricated, he clearly says  
24 they were ginned up. They had no value.  
25 That the value attempted to be asserted was

1 grossly aggravated.

2 Whether he engaged in sexual conduct  
3 with ■■■., who admittedly was a minor at the  
4 time, how many times he engaged in sexual  
5 conduct with ■■■., clearly goes to the value  
6 of these claims.

7 And he refuses the answer questions  
8 with regard to those matters. That is  
9 relevant -- directly relevant and material.

10 THE COURT: Well, the issue that I'm  
11 looking at more than anything else is one of  
12 whether or not the probative value is  
13 substantially outweighed by the prejudice.

14 And in looking at 90.403, since we are  
15 going to be dealing with it frequently, the  
16 rule of evidence states, quote, Relevant  
17 evidence is inadmissible if its probative  
18 value is substantially outweighed by the  
19 danger of unfair prejudice, confusion of  
20 issues, misleading the jury, or needless  
21 presentation of cumulative evidence. End  
22 quote as to the pertinent portion of the  
23 statute.

24 MR. SCAROLA: I'm not sure --

25 THE COURT: I don't need any further

1 argument until I request it be provided,  
2 please.

3 MR. SCAROLA: Sorry, Your Honor.

4 THE COURT: I bring us back again --  
5 it's grounds for the Court's ultimate  
6 ruling. I have been contemplating this,  
7 obviously, for quite some time -- to the  
8 time and place relating to the filing of the  
9 malicious prosecution claim, and the fact  
10 that these claims were continuing to mount  
11 the publicity that was being generated  
12 against Mr. Epstein was also continuing and  
13 relentless. For the record, I am not  
14 suggesting that said publicity was  
15 disproportionately provided. It simply was  
16 a matter of fact.

17 And bringing us back to the time and  
18 place analysis that the Court has engaged in  
19 on numerous occasions in the past, when the  
20 Rothstein firm crumbled and the various  
21 governmental agencies were raiding the  
22 offices, including the office of  
23 Mr. Edwards, that is when Mr. Epstein  
24 decided to bring this malicious prosecution  
25 claim.

1           His testimony in his deposition was  
2           such that he validated his claim that  
3           Rothstein and others, including  
4           Mr. Edwards -- including [REDACTED], for that  
5           matter, who was one of the defendants in the  
6           Epstein malicious prosecution claim -- had  
7           sensationalized, had ginned up, had  
8           conflated the claims that were pending  
9           against him so as to attract millions of  
10          dollars in what turned out to be  
11          extraordinarily difficult to understand  
12          investments -- which should be placed in  
13          quotes -- and were the factoring of the  
14          cases by Mr. Rothstein and perhaps others,  
15          though, I don't know of anything that was  
16          proven or alleged against Mr. Edwards in  
17          that vein.

18                 And that essentially the claims against  
19          Epstein relating to the Edwards clients --  
20          in particular E.W., Jane Doe and more  
21          particularly [REDACTED], to whom this question was  
22          directed -- were inappropriately inflated  
23          and the allegations, as well, made up or  
24          conflated in a manner that was somehow  
25          prejudicial to Mr. Epstein so as to lead

1           them to bring this claim for malicious  
2           prosecution.

3           So with that backdrop in mind, I'm  
4           going to overrule the objection finding  
5           that, while there would be a degree of  
6           prejudice like all evidence tends to elicit,  
7           the prejudice here would not be unfair and  
8           would not be in a scenario where the  
9           probative value would be substantially  
10          outweighed by the danger of unfair  
11          prejudice.

12          So Mr. Epstein would have to ability to  
13          use his Fifth Amendment or assert his Fifth  
14          Amendment right, and hence, he has an  
15          opportunity to invoke it. His objection for  
16          the reasons stated on the record are  
17          overruled.

18          The next question is, "How many times  
19          did you engage in sexual conduct with [REDACTED].?"  
20          The same ruling implication of Fifth  
21          Amendment.

22          Again, I believe that the ruling of the  
23          Court today lends some logic to the theory  
24          of adverse inference that the Court had  
25          already indicated it will give. And that is

1           that we leave it to the jury to decide  
2           whether the Fifth Amendment invocation does  
3           impact and influence their decision with the  
4           utilization of the instruction.

5           Again, under these peculiar  
6           circumstances -- meaning the facts of this  
7           case being different than the generic  
8           automobile accident or other premises type  
9           of liability claim, while, again, this is a  
10          very sensitive situation -- the Court  
11          recognizes its sensitivity, both as it  
12          relates to the victims, to Mr. Epstein, to  
13          Mr. Edwards as well.

14          But at the same time, as pointed out in  
15          several of the moving papers filed by  
16          Mr. Edwards, Mr. Epstein chose this forum.  
17          Mr. Epstein chose to proceed in the manner  
18          in which he proceeded against Mr. Edwards  
19          and against [REDACTED].

20          We are not here, as I mentioned  
21          earlier, to parse out and discuss the  
22          rationale for suing Rothstein. But by  
23          choosing that forum, he has brought upon  
24          himself many of the issues that the Court is  
25          engaging in by making these types of

1           allegations against Edwards, particularly at  
2           the time and place in which these  
3           allegations were made.

4           The Court can't emphasize enough that  
5           this Court was there at that time. And I  
6           don't want to inject myself as a witness. I  
7           am simply stating that because -- again, by  
8           happenstance, luck or other faith -- these  
9           state cases were -- the majority of the  
10          state cases brought, including, I believe,  
11          all three of these cases were in front of me  
12          at the time of the Rothstein firm debacle  
13          and crumbling.

14          And consequently, I saw and was engaged  
15          in those cases at the time. So the insight  
16          that I have, although not necessarily  
17          special, is certainly important in that I  
18          can fully comprehend and understand the  
19          timing issue more so than perhaps the casual  
20          observer.

21          Again, I want to make clear that my  
22          overall handling of these cases leads me in  
23          part to be -- to the rulings that I have  
24          made.

25          So he can assert the Fifth Amendment

1 rights, but the objections are overruled.

2 MR. VITALE: Your Honor, against that  
3 backdrop with regard to some of the 403  
4 objections that were being made, I'm  
5 wondering if I can make a brief point I  
6 thought might assist the Court.

7 THE COURT: Yes, sir.

8 MR. VITALE: Your Honor, in a malicious  
9 prosecution claim, the now plaintiff,  
10 Mr. Edwards, is required to live and die by  
11 the complaint that Mr. Epstein filed.

12 Regarding your statement that we have  
13 alleged in our papers and our pleadings that  
14 he built this playing field, I think it's  
15 important to talk about that just a moment.

16 We talked about ■■■., and I picked up  
17 paragraph 46. Quote, The truthfulness of  
18 ■■■.'s allegations and testimony in ■■■.'s  
19 state civil action has been severely  
20 compromised by the need to seek a  
21 multi-million dollar payout to help maintain  
22 RA's massive fraud.

23 That's at page 21, paragraph 46.

24 Later on page 22, paragraph 46,  
25 Mr. Epstein alleges that the actual --

1 quote, The actual facts behind her action --  
2 her being [REDACTED] -- would never support such  
3 extraordinary damages.

4 So when Mr. Epstein files this  
5 complaint in December of 2009, he bears the  
6 burden of proof. One of the issues he bears  
7 the burden of proof on is his allegation  
8 that what happened to [REDACTED], the actual facts  
9 behind her action, would never support the  
10 multi-million dollars in damages being  
11 sought.

12 So when a 403 objection is then raised,  
13 when Mr. Edwards seeks to prove that this  
14 allegation, among others, is knowingly  
15 false, and the objection being raised by  
16 Mr. Edwards is, well, the prejudice  
17 outweighs the probative value, is that a  
18 concession that Mr. Epstein would not be  
19 meeting his burden of proof on these claims?  
20 Because I think that would be directly  
21 relevant to malice.

22 I struggle to see how you can bring an  
23 action, make claims, have it dismissed on  
24 the eve of summary judgment, a malicious  
25 prosecution claims is filed against you,

1           then raise a 403 objection on all the  
2           allegations that you had the burden to prove  
3           in your claim.

4           It would seem to be almost a  
5           stipulation of malice that Mr. Epstein had  
6           no intent to prove his allegations.

7           THE COURT: And I appreciate your  
8           supporting the Court's ruling with the  
9           additional information.

10          Again, what I think we have to make  
11          clear and distinguish is the relevance of  
12          the questioning, vis-a-vis the allegations  
13          in Mr. Epstein's malicious prosecution  
14          claim, which I have tried to correlate. And  
15          you helped in terms of that correlation in  
16          bringing out the specific sections of the  
17          complaint. And I appreciate that.

18          But again, at the same time, what I'm  
19          attempting my best to do is maintain as  
20          level a playing field as I possibly can,  
21          despite the nature and sensitivity and  
22          somewhat pureed allegations and facts that  
23          are associated with this case so as to make  
24          sure that we are asking relevant questions,  
25          but not going so far as to create an

1           unleveled playing field by using salacious  
2           and otherwise inappropriate commentary or  
3           questioning. And trying to draw that line,  
4           while it's a difficult one, is something  
5           that I'm endeavoring to do. So I thank you  
6           for that.

7           MR. LINK: Your Honor, may I make one  
8           comment on that, please?

9           THE COURT: Sure.

10          MR. LINK: I appreciate Mr. Vitale  
11          doing that. I think he actually made my  
12          point for me, which is this. And the Court  
13          has been very clear about this. We are not  
14          trying [REDACTED]'s malicious prosecution case.  
15          She's not a plaintiff here. And maybe if  
16          she was, the allegations, the relevance  
17          might outweigh the prejudice. But she's not  
18          the plaintiff. It's Mr. Edwards.

19          THE COURT: I understand. Make no  
20          mistake, capturing the time of this  
21          particular lawsuit filed by Mr. Epstein is  
22          critical to this Court's analysis.

23          Capturing the allegations that were  
24          filed and supplemented, as far as the  
25          Court's ruling is concerned by Mr. Vitale's

1           referencing the complaint and the  
2           allegations pertaining specifically to [REDACTED].  
3           is critical to this Court's analysis.

4           The fact that this case was brought at  
5           this critical time period when Edwards was  
6           probably at his weakest, when the claims of  
7           these minors could have been compromised by  
8           the extraordinary events which took place at  
9           that time involving Rothstein and his  
10          cohorts, what we have all agreed should have  
11          been a blowing up, for lack of a better  
12          term, of that Rothstein firm at that  
13          particular time, a viable argument can be  
14          made by Edwards, and could be made by [REDACTED].,  
15          as well, that Mr. Epstein pounced on the  
16          opportunity to strike at their weakest  
17          moment so as to potentially bring them to  
18          their knees and compromise their claims for  
19          a value that would have been less than the  
20          true value of their claims. And that served  
21          as his motivation for bringing this action.

22          That could be the argument that's made.  
23          And that forms, at least to some degree, the  
24          underpinnings of this Court's rulings.

25          I am not going to sit here and be naive

1 as to what may or may not have transpired.  
2 That would be an abdication of my  
3 responsibility.

4 Judges have to be sensitive, in my  
5 view, to the underlying circumstances that  
6 have been raised by the respective parties.  
7 And that sensitivity is engendered by the  
8 circumstances that transpired here.

9 And to ignore those circumstances,  
10 again, would be an abdication of my  
11 responsibility.

12 Next issue, please.

13 MR. SCAROLA: Your Honor, we move to  
14 the objections to general interrogatories  
15 dated September 16th, 2010.

16 THE COURT: I am with you.

17 MR. SCAROLA: These interrogatories  
18 relate to the extent of the criminal  
19 activity in which Mr. Epstein was engaged.

20 I will point out to Your Honor that  
21 Count 2 of the complaint filed against  
22 Mr. Edwards seeks to enjoin all defendants  
23 from engaging in any of the conduct that is  
24 alleged -- the broad range of conduct that  
25 is alleged in the complaint, and asks for an

1           injunction against Mr. Edwards from the  
2           continuation of the civil actions brought  
3           against Epstein until criminal charges have  
4           been formally brought against Mr. Edwards  
5           and seeks --

6           THE COURT: Mr. Epstein.

7           MR. SCAROLA: No, against Mr. Edwards.

8           What is requested is an injunction  
9           against any further prosecution of the  
10          pending civil claims -- all pending civil  
11          claims until criminal charges have been  
12          brought against Mr. Edwards.

13          THE COURT: Thank you.

14          MR. SCAROLA: Context, as Your Honor  
15          has recognized, is extremely important.  
16          Motive, as Your Honor has repeatedly  
17          recognized, is extremely important. What  
18          was Jeffrey Epstein attempting to accomplish  
19          by the filing of this complaint? He tells  
20          us he was attempting to enjoin the  
21          prosecution of the civil actions pending  
22          against him. He was clearly attempting to  
23          compel settlements of all of the claims that  
24          Edwards was prosecuting for sums far less  
25          than the amounts being claimed against him.

1 He was reasonably seeking to deter all  
2 victims from prosecuting claims against him  
3 through the assault on [REDACTED]. and Bradley  
4 Edwards. And pending at this time was an  
5 effort to set aside the crime -- through the  
6 Crime Victims' Rights' Act case, the plea  
7 deal that would have and still does expose  
8 Jeffrey Epstein to federal prosecution.

9 In addition to that, evidence existed  
10 that Jeffrey Epstein had engaged in the same  
11 type of criminal conduct in which he had  
12 engaged in Palm Beach County, Florida, in  
13 various other locations, both in the United  
14 States and outside the jurisdiction of the  
15 United States.

16 So it is clearly relevant and material  
17 to know what Jeffrey Epstein -- the full  
18 extent of Jeffrey Epstein's exposure was in  
19 making a determination as to why someone  
20 would go to the extraordinary lengths that  
21 Mr. Epstein went to in filing these claims,  
22 which he knew to be false, against Bradley  
23 Edwards. He would do it because he hoped to  
24 achieved all of those things.

25 And the full extent of his potential

1 criminal exposure, how many children he had  
2 abused, over what period of time -- where,  
3 when and how -- is clearly relevant and  
4 material.

5 THE COURT: Thank you.

6 Mr. Link.

7 MR. LINK: Your Honor, I think we are  
8 talking about interrogatories.

9 THE COURT: I would like to start with  
10 numbers two and three.

11 MR. LINK: In listening to what  
12 Mr. Scarola said, frankly, I'm confused  
13 which case we are trying.

14 The criminal case is over. The cases  
15 against the three Edwards clients have been  
16 settled. They were settled nine years  
17 ago -- or eight years ago.

18 We are talking about, as this Court has  
19 told us, simply the malicious prosecution  
20 action. That's what we're trying.

21 This Court has told Mr. Scarola and  
22 myself many times that you're to create a  
23 balance of the playing field, that there  
24 would be some information about Edwards'  
25 three clients that you will let in. But

1 that you have ruled consistently, Your  
2 Honor, that information related to  
3 non-Edwards clients is not going to come in.

4 THE COURT: To a certain degree, just  
5 so the record is clear.

6 In other words, I am still dealing with  
7 the issue of the gross amount of settlement  
8 paid by Mr. Epstein, as well as the number  
9 of claims brought against Mr. Epstein in the  
10 aggregate --

11 MR. LINK: And I apologize. I know  
12 that's under this Court's consideration. I  
13 didn't mean to eliminate that.

14 But the point of it is this.  
15 Mr. Scarola and Mr. Edwards want to try this  
16 case to the jury, what about a horrible,  
17 rotten person Mr. Epstein was and his  
18 conduct with the alleged victims in hopes  
19 that that will taint the jury to dislike  
20 Mr. Epstein enough that they will award  
21 Mr. Edwards, whose career has skyrocketed on  
22 the back of Mr. Rothstein, who has admitted  
23 he has no damages of an economic type, so  
24 that they will get money.

25 And this Court has been very clear to

1 us about keeping this playing field leveled.  
2 And for us to stand here and make arguments  
3 about the criminal conduct, how much time he  
4 spent in jail, anything else that happened  
5 outside of whether the -- the key question  
6 in this case, Judge, you said it dozen  
7 times --

8 I will tell you, I occasionally step  
9 back and say, Gosh, you got it right. You  
10 do have it right. Doesn't mean I don't  
11 process it. But it really comes down to the  
12 time this complaint was filed. And you said  
13 it in context.

14 And issue of why it was filed, as  
15 Mr. Scarola says, may go to the level of  
16 malice. No question about it. But the  
17 primary issue in this case has to do with  
18 probable cause, and was there sufficient  
19 information at time the complaint was filed  
20 to give a reasonable person a sufficient  
21 basis to bring this suit.

22 And I am with you, Judge. You may not  
23 like the timing. You may have felt  
24 Mr. Edwards was at his weakest --

25 THE COURT: I don't want to be

1           misconstrued. Whether I like or dislike the  
2           timing is not of consequence to me. What  
3           I'm suggesting to you is that it is the  
4           responsibility of any court, in my  
5           respectful view, to be able to recognize the  
6           nuances, and to recognize context, so as to  
7           be able to better rule on issues that come  
8           before the Court.

9           If the Court is immune to that and  
10          simply wants to call balls and strikes, for  
11          some judges that may be appropriate. But if  
12          you are not willing to delve into the  
13          context, then, as I mentioned earlier, I  
14          think personally it would be an abdication  
15          of my personal responsibility. I can't  
16          speak on behalf of other courts. So that's  
17          where I wanted to make sure that we are  
18          clear.

19          Whether I like or dislike something is  
20          of no consequence to me. I am a process  
21          guy, as, hopefully, all of you know. I'm  
22          interested in the preservation of the  
23          process and preservation of appropriate  
24          protocol. The result is of no consequence  
25          to me. I don't care.

1           What I do care about is that we are  
2 going to process this case in a manner  
3 that's going to be professional; that's  
4 going to stick to the issues; that is not  
5 going to be sensationalized, unless  
6 necessarily required by the nature of the  
7 manner in which a defense is brought or a  
8 claim is brought; and that everyone is going  
9 to be treated respectfully, with dignity,  
10 whether it be a victim, whether it be  
11 Mr. Epstein, whether it be Mr. Edwards,  
12 anyone who comes before the Court, whether  
13 it be a witness or otherwise.

14           So that's not going to be changed by  
15 virtue of the nature of this case, the  
16 public nature of the case, the publicity  
17 engendered by the case. It's not going to  
18 happen.

19           I don't need any further argument. The  
20 objections to numbers two and three are  
21 sustained.

22           Number four, "What is your best  
23 estimate of the number of times you have  
24 witnessed Ghislaine Maxwell engage in sexual  
25 activity with minor females?"

1           That question is also -- the objections  
2 to that question are also sustained. I'm  
3 sustaining them on relevance grounds. I'm  
4 also sustaining that, if there is any  
5 relevance that the Court is unable to  
6 determine, that a 403 analysis would be  
7 engaged so any remote probative value would  
8 be materially outweighed -- substantially  
9 outweighed by the prejudice.

10           Five. Let's talk about that.

11           Mr. Scarola.

12           MR. SCAROLA: This clearly has to do  
13 with economic motive, Your Honor. How much  
14 it has cost him is part of his motive for  
15 attempting to have all of these actions  
16 stayed to deter others from bringing claims  
17 against him. The financial jeopardy that he  
18 was facing and faced is relevant and  
19 material to both motive and malice.

20           THE COURT: Mr. Goldberger.

21           MR. GOLDBERGER: Your Honor, I would  
22 raise a Fifth Amendment objection to this  
23 question. I don't know whether Counsel is  
24 objecting to that. This is clearly -- as  
25 background for the Court, Mr. Epstein, when

1           this case was initiated, was being  
2           investigated, not only for the acts that the  
3           Court is well aware of, but also for money  
4           laundering.

5           And Judge Marra, in part of the Jane  
6           Doe 2 case, entered an exhaustive order  
7           confirming Mr. Epstein's right to invoke his  
8           Fifth Amendment privileges on anything  
9           relating to finances or net worth.

10          So I would suggest to the Court that  
11          any questions concerning any amount of money  
12          that Mr. Epstein has, or any amount of money  
13          that Mr. Epstein paid, anything that  
14          suggests how much Mr. Epstein has in the  
15          bank would come under the purview of the  
16          Fifth Amendment based on the money  
17          laundering aspect of the government's  
18          investigation of him.

19          THE COURT: Well, the allegations in a  
20          malicious prosecution claim are not only  
21          relating to the captured moment in time when  
22          the malicious prosecution claim was brought,  
23          but also the continuation of the claim  
24          against Mr. Edwards. And the question is  
25          not all encompassing. The question speaks

1 to the, quote, this lawsuit.

2 MR. GOLDBERGER: Anything at all that  
3 provides a connection, a step in the  
4 process, that would suggest how much  
5 Mr. Epstein has --

6 THE COURT: It is not a question of  
7 what Mr. Epstein has. It's what he has  
8 incurred. Meaning, what he has either paid  
9 or been billed.

10 MR. LINK: Your Honor, may I interrupt  
11 and have a moment with Counsel?

12 THE COURT: Yes. But let me just  
13 finish with my thought, if I could, please.

14 Getting back to his testimony and his  
15 allegation in his malicious prosecution  
16 claim, Mr. Epstein states that Rothstein and  
17 the litigation team knew or should have  
18 known that the three filed cases were weak  
19 and had minimal value. His -- and that's  
20 just one of the allegations that I picked  
21 out.

22 But his ability to afford to prosecute  
23 a malicious prosecution claim of this nature  
24 would at least have tangential relevance to  
25 what I spoke about earlier, i.e., the

1 context of when this case was brought. So  
2 there is at least tangential relevance here.

3 And the fact that he could support this  
4 type of claim being brought against Edwards,  
5 Rothstein and [REDACTED] at the time, and then  
6 continued to bring this case against Edwards  
7 I believe, at least, is marginally relevant.

8 And I fail to see, at this point, the  
9 probative value being materially outweighed  
10 by the unfair prejudice. And I don't see a  
11 Fifth Amendment assertion here. His ability  
12 to afford and prosecute through his  
13 attorneys a malicious prosecution claim does  
14 have some relevance.

15 MR. GOLDBERGER: I don't quite see the  
16 relevance.

17 MR. LINK: Before we continue, may I  
18 have one minute, Judge? Your Honor, do you  
19 mind?

20 THE COURT: Sure.

21 MR. LINK: Thank you.

22 Your Honor, may I have a moment on  
23 relevance?

24 THE COURT: Off the record.

25 (A discussion was held off the record.)

1 MR. LINK: Because of this  
2 interrogatory question, I think we actually  
3 have to look at it. Here is my objection to  
4 the question. And the reason -- I will tell  
5 you the reason why I wanted to talk to my  
6 co-counsel is because part of our damage  
7 claim was the amount of fees we were  
8 spending in the underlying case related to  
9 what we saw as unnecessary litigation  
10 conduct, Your Honor, that we tied into the  
11 Rothstein Ponzi scheme.

12 THE COURT: I am not saying that you  
13 can't bring that out if you wish to. I have  
14 no problem in that regard.

15 MR. LINK: I do.

16 THE COURT: I don't want to argue  
17 apples and oranges, which is what I'm trying  
18 to avoid. And that is, sure, if there's  
19 evidence that Mr. Epstein was paying  
20 exorbitant sums to his attorneys to somehow  
21 defend claims that had to do with either  
22 Mr. Edwards or someone from Mr. Edwards's  
23 firm, either prior to or at the time of or  
24 subsequent to his affiliation with  
25 Rothstein, I have no difficulty whatsoever

1 if Mr. Epstein wants to testify or have  
2 someone else testify as to what he perceived  
3 to be exorbitant or very high sums that he  
4 was paying in order to defend himself in  
5 those claims.

6 But at the same time, as I said before,  
7 that's the apples argument. The oranges  
8 argument goes to the heart of the malicious  
9 prosecution claim and whether or not it is  
10 relevant to the extent that Mr. Epstein had  
11 the financial wherewithal, had a cadre of  
12 lawyers who were able to represent him  
13 infinitely, if you will, to the extent where  
14 it would influence Edwards and [REDACTED]. at the  
15 very least and potentially any of the  
16 litigants who were bringing claims against  
17 Mr. Epstein because of the context that we  
18 have already discussed at length.

19 MR. LINK: I understand that. And  
20 that's why I was pointing out the language  
21 here, which, if you remember, the case  
22 against Mr. Edwards went away in 2012.

23 This interrogatory asks for every  
24 single penny paid from the beginning of  
25 time, essentially, through trial. But I

1 don't see how the fees and costs spent  
2 defending the malicious prosecution action  
3 by Mr. Edwards is relevant to what the Court  
4 just described. That's my objection to it,  
5 Judge.

6 THE COURT: I'm going to grant the --  
7 I'm going to sustain the objection in part  
8 and overrule the objection in part. You  
9 made a good point, Mr. Link. I am going to  
10 follow your suggestion.

11 MR. SCAROLA: Could I have a chance to  
12 speak before you do that, sir?

13 THE COURT: If you wish.

14 MR. SCAROLA: And I'm sorry to  
15 interrupt the Court. I didn't have a chance  
16 to speak to that regard.

17 THE COURT: If you haven't already  
18 spoken on it, go ahead.

19 MR. SCAROLA: Thank you, Your Honor. I  
20 had not.

21 As Mr. Link correctly points out,  
22 paragraph 51 of the complaint claims as  
23 damages as a direct and approximate result  
24 of the fraudulent and illegal conduct that  
25 Mr. Edwards is alleged to have engaged,

1 Mr. Epstein, quote, incurred significant  
2 attorney's fees and costs defending the  
3 discovery that was not relevant, material  
4 and/or calculated to lead to the  
5 admissibility of evidence, which was done  
6 for the sole purpose of pumping the cases to  
7 investors.

8 He also makes claims for attorney's  
9 fees and costs under both the RICO claim and  
10 the state civil action for criminal  
11 practices act, and treble damages for all of  
12 those fees that he's alleged to have paid.  
13 So what he is paying out is relevant and  
14 material with regard to the damage claims  
15 that have been made.

16 But in addition to that, you cannot  
17 bring a claim in good faith if you don't  
18 intend, from the outset, to support that  
19 claim by providing relevant and material  
20 information.

21 So the fact of the assertion of the  
22 Fifth Amendment privilege when he has put  
23 those matters at issue is what makes this  
24 relevant and material, because it  
25 demonstrates that these claims were not

1 brought in good faith.

2 He did not intend to support his damage  
3 claim with relevant and material  
4 information. He intended, from the outset,  
5 to assert his Fifth Amendment privilege and  
6 deprive us of the ability to be able to  
7 explore relevant and material information.

8 So I have no problem with the late  
9 assertion of a Fifth Amendment privilege to  
10 this question. I don't challenge that. I  
11 accept --

12 THE COURT: I don't understand it, so  
13 maybe I'm missing something.

14 MR. SCAROLA: This is not a motion to  
15 compel.

16 THE COURT: I don't understand how a  
17 question about what is the total obligation  
18 that is incurred to date for both fees and  
19 costs, both paid and currently owing in  
20 connection with your representation of this  
21 lawsuit, triggers a Fifth Amendment  
22 privilege assertion. Help me with that.

23 MR. SCAROLA: I don't believe that it  
24 does. I think it's an invalid assertion of  
25 privilege.

1           THE COURT: But I don't even understand  
2           how it could even be remotely connected to a  
3           fear that stating the amount of money  
4           paid -- and the ruling was going to be and  
5           will be that it will cover a one-year period  
6           of time prior to the bringing of this action  
7           and up to the 2012 date where the summary  
8           judgment motion was abandoned, and only for  
9           the underlying three cases dealing with  
10          E.W., [REDACTED]. and Jane Doe one year prior to  
11          the bringing of the malicious prosecution  
12          claim and up to 2012 abdication or  
13          abandonment or voluntary dismissal of the  
14          underlying claim against Edwards. So that's  
15          the ruling of the Court.

16          MR. GOLDBERGER: With that  
17          clarification --

18          THE COURT: Excuse me, Mr. Goldberger.  
19          Unless somebody explains to me how the Fifth  
20          Amendment -- how criminal prosecution is  
21          anticipated or how Mr. Epstein would be  
22          exposed to criminal prosecution solely by  
23          disclosing the amount -- I'm not asking him  
24          to disclose or not requiring him to disclose  
25          to whom it was paid. I'm not requiring him

1 to disclose from where it was paid. I'm not  
2 suggesting that he state any net worth  
3 issues. I'm not requiring him to set forth  
4 his bank account information. None of that.

5 All I'm saying is, under the context  
6 that was read by Mr. Scarola relating to the  
7 claims that were made in this case,  
8 vis-a-vis the underlying amounts that he was  
9 apparently required to pay his lawyers to  
10 defend him against what would be spurious,  
11 unfounded, weak claims in those three cases  
12 only -- E.W., [REDACTED], and Jane Doe -- and at  
13 the time -- a year before, I should say,  
14 would give us an indication of what the  
15 payments were and would not be overly  
16 invasive or remote in time.

17 And then up to the time that he took a  
18 voluntary on the underlying claims brought  
19 against Edwards provides, not only, again,  
20 the information that was read by Mr. Scarola  
21 as to the underlying reasons for bringing  
22 this malicious prosecution claim, but also,  
23 as I said -- I think it bears repeating --  
24 his financial wherewithal at the context of  
25 when this case was brought, vis-a-vis

1 Edwards situation at the time, meaning a man  
2 without a law firm -- to borrow a --  
3 paraphrase a movie title -- and clients that  
4 were depending upon Edwards's  
5 representation, presumably depending upon  
6 Edwards being with a law firm that could  
7 finance the cases that were brought on  
8 behalf of these three individuals, and that  
9 financial wherewithal having a bearing on  
10 the relevant evidence that would be brought  
11 to support what the plaintiff in the  
12 malicious prosecution claim is saying that  
13 this was without any probable cause and, in  
14 fact, was maliciously brought.

15 MR. SCAROLA: Your Honor, I don't  
16 remember being in a position like this  
17 before where a court was agreeing to give me  
18 information that I had asked for and my  
19 telling the court, Thank you, but I don't  
20 want it.

21 This isn't a motion to compel. What we  
22 have is a motion with regard to the  
23 assertion of the Fifth Amendment privilege.

24 If Your Honor turns the page --

25 THE COURT: I have it here in front of

1 me.

2 So you're not looking for the  
3 information?

4 MR. SCAROLA: No.

5 THE COURT: All you're saying is that  
6 under this situation, the Fifth Amendment  
7 privilege would not be applicable. But  
8 you're suggesting to me -- I thought I heard  
9 earlier that you can envision a scenario  
10 where it would be.

11 MR. SCAROLA: I'm not telling you that  
12 it's not applicable. I can envision a  
13 situation where it would be a link in the  
14 chain in a money laundering claim. I can  
15 envision that.

16 So the issue before the Court is the  
17 same issue that we have been dealing with  
18 with regard to all of these other questions.  
19 Do we get to tell the jury that, when we  
20 asked Mr. Epstein to tell us about his  
21 damages that he claimed in his complaint,  
22 his response was, "I assert the Fifth  
23 Amendment." That's the issue before the  
24 Court.

25 Can we read the question? Can we read

1 the assertion of Fifth Amendment privilege?  
2 And can we, then, argue an adverse inference  
3 from that?

4 This isn't a motion -- I'm sorry we  
5 seemed to have gotten off track there. This  
6 is not a motion to compel. So we are beyond  
7 the point where I want that information.

8 THE COURT: Awesome.

9 MR. GOLDBERGER: Having said that, Your  
10 Honor --

11 MR. LINK: Hang on.

12 THE COURT: All I'm going to say is  
13 this. Now that we've gotten to the point --  
14 and I appreciate reining back the analysis  
15 here -- I don't find here that it is an  
16 appropriate invocation of the Fifth.  
17 However, it would be allowed to be read to  
18 the jury and that -- it be allowed to be  
19 read in the context that the witness took  
20 the Fifth as to this question number five.

21 The manner in which the question is  
22 phrased, as I said before, I will be willing  
23 to whittle it down, as I've indicated, if  
24 that was the request. The objection,  
25 however, does not include overbreadth. It

1 is for relevance, burdensome and propounded  
2 for harassment and asks for information  
3 which is protected by the Fifth Amendment of  
4 the United States Constitution.

5 Now, that includes number five. It  
6 includes all of the interrogatories before  
7 me, two through nine.

8 So if you are withdrawing the Fifth  
9 Amendment assertion, then what happens?

10 MR. GOLDBERGER: So the record is  
11 clear, as to this question -- question five  
12 only -- we do withdraw our invocation of our  
13 Fifth Amendment privilege as to question  
14 five.

15 MR. SCAROLA: Our position is, too  
16 late. Too late. That assertion of Fifth  
17 Amendment privilege has been in place in  
18 this case for eight years. We are now  
19 approaching trial.

20 THE COURT: But you don't want the  
21 information, Mr. Scarola. You told me that  
22 on the record. So what then is the point,  
23 other than to make him look bad, so to  
24 speak -- and forgive the lack of legal  
25 terminology?

1           MR. SCAROLA: The point is this, sir.  
2           When you file a complaint, you undertake the  
3           obligation to provide all information  
4           relevant and material or reasonably  
5           calculated to lead to admissible evidence.

6           THE COURT: And I am willing to, in  
7           pertinent part, compel him to give you that  
8           information. You have refused the  
9           information.

10          Now, if the information is of no  
11          benefit from an evidentiary standpoint in  
12          front of a jury, then what is the purpose of  
13          announcing and reading this interrogatory  
14          with the invocation of a Fifth Amendment  
15          privilege, other than to cast him in a bad  
16          light?

17          MR. SCAROLA: Your Honor, I apologize  
18          for not having made this clear, but let me  
19          try one more time.

20          THE COURT: I understand what you're  
21          saying. Part of his allegations -- and I'm  
22          only repeating this so I better understand  
23          it.

24          MR. SCAROLA: Yes, sir.

25          THE COURT: Part of his allegations in

1 his malicious prosecution claim stated that  
2 he was paying exorbitant amounts of money in  
3 order defend himself from what, in his mind,  
4 was overinflated, overexaggerated claims  
5 that were being promulgated and propagated  
6 by Rothstein and his cohorts, which included  
7 Edwards and [REDACTED], at least in part.

8 MR. SCAROLA: Yes, sir.

9 THE COURT: Okay. Now, my point is, if  
10 you are not looking for the substantive  
11 information, which you have indicated to me  
12 you are no longer interested in, what other  
13 benefit is it to your client to read this  
14 interrogatory if there's no substantive gain  
15 from it, other than to cast him in a bad  
16 light?

17 Because, again, we have already  
18 determined -- I have already determined that  
19 questions relative, for example, to any  
20 sexual engagement with [REDACTED]. would be  
21 relevant because it goes directly to the  
22 heart of some of the allegations made by  
23 Mr. Epstein in his malicious prosecution  
24 claim pertaining to the weak nature of those  
25 claims and the conflating and exaggerating

1 of those claims, which otherwise would have,  
2 quote, minimal value, end quote.

3 I got that, I think.

4 MR. SCAROLA: Yes, sir. I think you  
5 have.

6 THE COURT: So let's talk about the  
7 context of this question and what other  
8 benefit would it be other than casting in  
9 bad light and triggering yet another adverse  
10 inference against Epstein.

11 MR. SCAROLA: A civil action filed for  
12 damages may be filed in good faith if you  
13 have a reasonable basis to believe that you  
14 can prove your claim and if you are willing  
15 to participate in the process necessary in  
16 order to recover those civil damages.

17 If you enter upon this process knowing  
18 that you have no intention of ever providing  
19 discovery that is relevant and material to  
20 the very damages that you claim, then that  
21 goes to whether you ever filed in good  
22 faith.

23 You didn't file in good faith because  
24 you had no intention of providing  
25 information relevant and material to the

1 damages that you claim.

2 That's why the fact that, in 2010,  
3 Jeffrey Epstein was refusing to provide  
4 information about the damages that he  
5 claimed is relevant and material. His  
6 changing his mind eight years later when I  
7 don't have an opportunity to depose him  
8 anymore, when he's telling us he's not going  
9 to show up at trial, when he's telling us he  
10 doesn't intend to testify, that doesn't  
11 change the fact that, when he filed this  
12 case, he had no intention of supporting it  
13 with discoverable evidence. That's the only  
14 point I'm trying to make.

15 And if Your Honor does not believe that  
16 to be relevant and material, then I  
17 understand that you disagree with the  
18 position I have asserted. I just want to  
19 make sure that my position is clear.

20 THE COURT: Understood.

21 MR. SCAROLA: Getting that information  
22 now is not material. What's material is  
23 proving that he had no intention of  
24 providing it when he filed this claim.  
25 That's what I'm trying to -- that's the

1 point I'm trying to make, sir.

2 MR. LINK: Your Honor, can I have just  
3 one minute?

4 THE COURT: Sure.

5 MR. LINK: So if you read the  
6 interrogatory, it doesn't ask what are your  
7 damages, which is what Mr. Scarola says he's  
8 looking for. He actually asked that  
9 question in an interrogatory in 2011 and he  
10 answered it.

11 THE COURT: Mr. Scarola, show Mr. Link  
12 the provision that you read, because if he's  
13 like me, I'm not a -- I'm more of a visual  
14 learner than I am auditory, so --

15 MR. LINK: I'm looking at his  
16 interrogatory.

17 THE COURT: I believe you were reading  
18 a section of his --

19 MR. LINK: Where we're seeking  
20 attorney's fees and damages.

21 Yes, sir. Let's talk about that for a  
22 minute.

23 THE COURT: Let me just take a look and  
24 refresh my recollection, please, and I will  
25 be with you in a moment.

1 MR. LINK: That's not the --

2 MR. SCAROLA: This is the addendum  
3 clause. This is where he's saying what his  
4 damages were. And he asked on top of those  
5 damages, for attorney's fees and costs.

6 MR. LINK: Your Honor, I agree, which  
7 is what I said to you earlier, which is, we  
8 were seeking at the time -- and we filed  
9 this December 2009 -- December 9, 2009 --  
10 fees that had been incurred to that date.  
11 That was for the damages.

12 And I have said if this interrogatory  
13 asked that question -- Mr. Scarola said,  
14 Judge, this asked for damages. It doesn't  
15 ask for damages.

16 One year later, Judge, he asked about  
17 damages in 2011 in an interrogatory, and we  
18 answered it. We answered his damage  
19 interrogatory.

20 This interrogatory has nothing to do  
21 with damages. He can say it says damages  
22 all he wants. That's not what it says. And  
23 we answered it.

24 He says we wouldn't provide  
25 information. We gave him damage information

1 and answered Mr. Scarola's interrogatory one  
2 year later when he propounded it properly  
3 and said, What are your damages? That's a  
4 proper interrogatory. This interrogatory  
5 does not ask that question.

6 So I think if you are on a motion to  
7 compel, which we're not, what the Court  
8 would do is exactly what you said: I'm going  
9 to dice this up a little bit, and I would  
10 have then asked for 10 days to answer the  
11 way you reframed it.

12 But it is unrelated to the damage  
13 interrogatory that Mr. Scarola gave us and  
14 we answered.

15 THE COURT: Mr. Scarola has managed to  
16 persuade me that the invocation of the Fifth  
17 Amendment at the time it was invoked --  
18 i.e., the date I'm giving here,  
19 September 16, 2010, nearly eight years  
20 ago -- the attempt now to withdraw the  
21 invocation would be too little too late.

22 The complaint and its allegations --  
23 which, again, I am trying to steadfastly  
24 follow and track as a basis for my ruling --  
25 does reflect a claim for underlying, i.e.,

1 fees generated and associated with at least  
2 the E.W., [REDACTED]. and Jane Doe cases, and  
3 particularly where [REDACTED]. was a named  
4 defendant in the underlying claim brought by  
5 Mr. Epstein against Rothstein, Edwards and  
6 [REDACTED]. that Mr. Epstein brought that into the  
7 case. And as such, if he was unable,  
8 unwilling or otherwise believed he had a  
9 Fifth Amendment privilege, then it's going  
10 to be allowed to be published.

11 The remaining objections are overruled.

12 MR. SCAROLA: We are withdrawing number  
13 six, Your Honor. You needed not deal with  
14 that.

15 The next one is number eight.

16 THE COURT: Thank you. The same ruling  
17 would apply. That is, the objections are  
18 overruled similar to the reasons that I have  
19 already announced on the record pertaining  
20 to the deposition questions that were  
21 associated with this individual [REDACTED]. The  
22 invocation of the Fifth Amendment will be  
23 able to be published to the jury.

24 Are you still proceeding with nine?

25 MR. SCAROLA: Yes, sir, without

1 argument.

2 THE COURT: What does that mean?

3 MR. SCAROLA: There's a typographical  
4 error. In the retyping, I think the  
5 original interrogatory was --

6 THE COURT: I just didn't understand  
7 it. Now I get it.

8 The objection is sustained as to  
9 relevancy. Therefore, it would not be able  
10 to be read as an invocation of the Fifth  
11 Amendment privilege evidence.

12 Let's move on now.

13 MR. SCAROLA: These can probably be  
14 dealt with as a group, Your Honor. These  
15 are all net worth interrogatories in  
16 connection with the punitive damage claim  
17 pending against Mr. Epstein.

18 THE COURT: Forgive me for this, but  
19 has the punitive damage claim been formally  
20 brought as of yet?

21 MR. SCAROLA: Yes, sir.

22 THE COURT: And that's been ordered by  
23 the Court pursuant to statute?

24 MR. SCAROLA: Yes, sir.

25 THE COURT: I know I have asked the

1 question before. I apologize for asking it  
2 again.

3 With that in mind, let's go ahead and  
4 proceed. Thank you.

5 Your objection, Mr. Goldberger.

6 MR. GOLDBERGER: As to each and every  
7 one of the net worth interrogatories -- it  
8 is not an objection. I invoke Mr. Epstein's  
9 Fifth Amendment privileges as to those  
10 questions. I would once again remind the  
11 Court that Mr. Epstein was the subject of a  
12 money laundering investigation.

13 MR. SCAROLA: We are not challenging  
14 the validity of the assertion of the  
15 privilege.

16 MR. GOLDBERGER: Thank you.

17 THE COURT: So it will just be a  
18 publication issue?

19 MR. SCAROLA: That's correct. Are we  
20 permitted to publish these responses and the  
21 invocation of the Fifth Amendment so that  
22 the jury may draw reasonable adverse  
23 inferences from the refusal to answer?

24 THE COURT: It would only be the  
25 assertion of the Fifth, Sixth and Fourteenth

1 Amendment granted by the United States  
2 Constitution. The rest of this information  
3 would not be admissible to the jury.

4 In other words, I'm not going to allow  
5 the publication of the rationale used by  
6 counsel.

7 MR. SCAROLA: It would only be the last  
8 sentence, Your Honor. I cannot provide  
9 answers.

10 THE COURT: Is that agreeable to you?

11 MR. GOLDBERGER: Yes, Your Honor.

12 Thank you.

13 THE COURT: Thank you.

14 We move now to responses to request for  
15 admissions, dated February 26, 2013.

16 MR. GOLDBERGER: So I would reinvoke,  
17 if necessary, our Fifth Amendment privileges  
18 to each and every one of the requests for  
19 admissions.

20 THE COURT: Before I misconstrue the  
21 rationale of why this is being brought  
22 before me, Mr. Scarola.

23 MR. SCAROLA: Yes, Your Honor.

24 Again, it is our -- it is our right --  
25 although, no requirement -- it is our right

1 to introduce evidence with regard to the  
2 pecuniary circumstances of the defendant in  
3 a punitive damage case.

4 These requests for admissions go  
5 directly to that issue, and we should be  
6 permitted to read them to the jury and to  
7 demonstrate that there was a refusal to  
8 answer, so that the jury may draw whatever  
9 adverse inference that is appropriate.

10 THE COURT: So this -- again, only the  
11 last sentence of the objection?

12 MR. SCAROLA: That's correct, sir.

13 THE COURT: And, Mr. Goldberger, you  
14 are agreeing to that?

15 MR. GOLDBERGER: Yes. We are  
16 continuing to invoke our Fifth Amendment  
17 privileges.

18 THE COURT: For the record, there's  
19 been no request to deem the requests for  
20 admissions admitted.

21 MR. SCAROLA: That is correct, sir.

22 THE COURT: Very well.

23 MR. LINK: Your Honor, so the record is  
24 clear, this is a bifurcated trial. The  
25 punitive damages phrase is separate from the

1 main trial.

2 THE COURT: I just want to make sure we  
3 are all on the same page.

4 MR. LINK: I believe we are, sir.

5 THE COURT: I believe that takes care  
6 of this particular item.

7 Thank you all for your participation.

8 Let's look at item number 11, then, to  
9 accommodate Mr. Goldberger. It shouldn't  
10 take long.

11 Now, this is framed as a motion to  
12 compel, dated February 26th of 2018.

13 Mr. Scarola, does it still remain a  
14 motion to compel?

15 MR. SCAROLA: I'm sorry, Your Honor.  
16 I'm switching files.

17 THE COURT: That's okay. This goes to  
18 the sexual offender issues.

19 MR. VITALE: Yes, it does, Your Honor.

20 MR. SCAROLA: The reason why I couldn't  
21 find my file is because Mr. Vitale is  
22 handling this one.

23 THE COURT: Very well. Mr. Vitale,  
24 good morning. Go ahead.

25 MR. VITALE: Your Honor, the motion to

1           compel concerns the request for admissions  
2           that were propounded in February of this  
3           year.

4                     Excuse me one second so I can locate  
5           it.

6                     Your Honor, the first request for  
7           admission request that Mr. Epstein admit  
8           that a printout, which was attached to the  
9           request for admission of his New York State  
10          sex offender registration page, was  
11          authentic.

12                    The New York State sex offender  
13          registration page contains information  
14          concerning assets that Mr. Epstein was  
15          required to list as part of his registration  
16          of status in New York. It includes  
17          multiple -- my multiple, I mean dozens of  
18          vehicles and homes, and I believe one or two  
19          commercial airplanes --

20                    MR. SCAROLA: Private airplanes.

21                    MR. VITALE: Private airplanes. I  
22          believe one might be a 747.

23                    As Your Honor is aware, 1.370 is  
24          routinely used by litigants to narrow the  
25          issues at trial. 1.370 itself specifically

1 says that a party can use it to require a  
2 party to admit the authenticity of a  
3 document, as long as that document is  
4 attached.

5 Mr. Epstein, in response to that  
6 request for admissions, stated, "Epstein  
7 cannot admit or deny this request because he  
8 has no control over or personal knowledge  
9 about the authenticity of the registration  
10 attached to Exhibit A to Edwards's request."

11 As Mr. Scarola mentioned earlier,  
12 that's impermissibly evasive.

13 To the extent that Mr. Epstein --

14 THE COURT: Do you have a copy of it?

15 MR. VITALE: Of the request --

16 THE COURT: Of the registration page.

17 MR. VITALE: I am sure I do, Your  
18 Honor.

19 THE COURT: I didn't go to any great  
20 lengths to try to locate it, but it wasn't  
21 included, unfortunately, as an exhibit, as  
22 it mentions in the motion.

23 MR. VITALE: I apologize, Your Honor.  
24 I do not have that available with me. It  
25 was a printout straight from the website

1           online.

2           THE COURT: It wasn't included in this  
3 particular folder that was provided to me by  
4 the Link and Rockenbach law firm. I don't  
5 know if you supplemented it at all.

6           MR. VITALE: I didn't. I'm sure that  
7 was just an oversight.

8           THE COURT: Does anybody else have a  
9 copy?

10          MR. LINK: It wasn't attached. You got  
11 what we got.

12          THE COURT: For example, I would like  
13 to see whether Mr. Epstein signed it. Was  
14 it in his handwriting? Was it typed? Does  
15 it have to be signed? Does it have to be  
16 signed before a notary public? I don't know  
17 this. Unfortunately, I don't specialize in  
18 criminal law. Some may question whether I  
19 specialize in anything.

20          MR. VITALE: The answer to all those  
21 questions would be no. It's not  
22 handwritten. It's not signed by Mr. Epstein  
23 before a notary public. It is information  
24 that Mr. Epstein was required to provide as  
25 part of his registration status to the New

1 York government. And that information is  
2 then placed on the website by an employee, I  
3 believe, from New York City.

4 Now, admitting authenticity of  
5 documentation does not require the party to  
6 whom the request for admission is sent to  
7 have personal knowledge of the contents.

8 Your Honor, I could send a request for  
9 admission and attach a copy of the New York  
10 Times from today and ask Mr. Epstein to  
11 admit the authenticity of that document. It  
12 would not be a proper objection to say he  
13 didn't write the New York Times. Of course  
14 he did not. Authenticity is simply is it  
15 true and correct; is it reasonably  
16 understood to be an accurate copy of  
17 whatever it is -- whatever is attached.

18 So the answer here, based solely on  
19 personal knowledge, having no -- first of  
20 all, having no control is inaccurate. The  
21 personal knowledge issue is not a proper  
22 objection.

23 Now, requests for admissions  
24 specifically state that, if you are going to  
25 allege -- if you are not going to admit or

1 deny, you just state that you made a  
2 reasonable inquiry, and no reasonable  
3 inquiry here has been made.

4 More importantly, the statement that  
5 Mr. Epstein has no control over the  
6 information is not accurate, because it's  
7 information that he provided. And that  
8 distinguishes the cases that Mr. Epstein  
9 relies upon.

10 And the primary case that appear to  
11 be -- is a Fifth DCA case called Nationwide  
12 Mutual Fire Insurance Company versus  
13 Darragh, 95 So.3d 897. And in that case,  
14 Your Honor, there was an admission of  
15 website information where the user of the  
16 website was plugging in assumptions, and the  
17 website is spitting out a response based on  
18 the assumptions provided. And the Fifth DCA  
19 said, Well, because there's no one to  
20 authenticate those assumptions or  
21 authenticate the document, that's not  
22 proper.

23 THE COURT: I didn't read the case. Is  
24 it a defamation case?

25 MR. VITALE: I have a printout. I can

1 tell you. It doesn't appear to be Your  
2 Honor. It was for future potential military  
3 retirement benefits. That's part of the  
4 plaintiff's economic damage claim.

5 But this case is different. This is  
6 not a situation where the printout that  
7 Mr. Epstein is being requested to  
8 authenticate is a printout containing  
9 assumptions that are plugged in and whatever  
10 that model spits back out. This is --

11 THE COURT: What you're saying is, this  
12 is something that Mr. Epstein would have  
13 been necessarily involved in the creation.

14 MR. VITALE: Of course.

15 THE COURT: I did find the case, by the  
16 way. It's not, quote, information that's  
17 been downloaded from government websites  
18 concerning expected military retirement  
19 benefits that would be prepared by somebody  
20 else.

21 MR. VITALE: Correct, Your Honor.  
22 Although the information is, obviously  
23 inputted into the system by someone -- they  
24 took what Mr. Epstein gave them. They put  
25 it into the system, then it's displayed on

1 the New York government's website.

2 So the information that's on that  
3 website is either authentic or it's not.  
4 Mr. Epstein is able to answer that question.  
5 And the response given is not a proper  
6 response under 1.370. So that's our  
7 position on number one.

8 THE COURT: All right, thank you.

9 MR. LINK: Your Honor, I don't know how  
10 we can have this conversation without having  
11 the document, frankly, to talk about it.

12 I also believe it's incomplete. They  
13 want to attach one page. I think we are  
14 both hamstrung in having this conversation.  
15 Without you seeing the pages I don't know  
16 how you can rule.

17 THE COURT: Well, I would like to have  
18 it. I think the nature of, what I presume,  
19 looking at it, it's relatively self-evident,  
20 as I explained here earlier.

21 Why don't we get to the issue that I  
22 think Mr. Goldberger is interested in, and  
23 that is the Fifth Amendment and other  
24 privileges or assertions that Mr. Epstein  
25 may seek to assert as to request number two

1 that says, quote, Information contained in  
2 the printout of the New York State sex  
3 offender registration page is accurate.

4 MR. GOLDBERGER: So, without having the  
5 benefit of the document and recognizing that  
6 there are other objections that need to be  
7 discussed with the Court about the  
8 registration page, I cannot think of  
9 anything more that would involve  
10 Mr. Epstein's Fifth Amendment privileges  
11 than asking him whether he is a sex offender  
12 and whether he has pled guilty or has been  
13 found guilty of a sex offense in light of  
14 this side of courtroom's attempts to --  
15 through other counsel involved in the case  
16 to set aside this plea agreement and subject  
17 him to prosecution.

18 THE COURT: I do want to see the  
19 document. I think that it is difficult for  
20 me to rule without seeing the document.

21 MR. VITALE: Your Honor, we can have  
22 that printed during the lunch hour.

23 THE COURT: That will be fine. If  
24 there's any Fifth Amendment or other  
25 privilege issues that need to be addressed,

1 we will take them up when you are available,  
2 okay?

3 MR. GOLDBERGER: Thank you, Judge. I  
4 appreciate you giving me the time this  
5 morning and do my other stuff.

6 THE COURT: Always a pleasure to see  
7 you, as well as other counsel today.

8 I have indicated to Judge Sasser that I  
9 will assist her in the presentation of a  
10 sidebar series that she's doing today, so I  
11 think that's to begin around now. I am  
12 going to excuse myself at this point and we  
13 will pick up again -- I prefer to pick up at  
14 1:00, if that's okay with everybody.

15 MR. SCAROLA: I heard Mr. Searcy's  
16 presentation yesterday at lunch. You won't  
17 be back here by 1.

18 THE COURT: I may have to respectfully  
19 excuse myself to accommodate what I perceive  
20 to be equally pressing matters to be here,  
21 as well as to help to educate our younger or  
22 less-experienced attorneys. With that in  
23 mind, I am going to go ahead excuse myself.

24 (A discussion was held off the record.)

25 MR. LINK: Can I have one more second

1 before you leave the bench?

2 Mr. Scarola and I have conferred. I  
3 think there's only one motion left to be  
4 heard that we can set for 8:45 dealing with  
5 changing of the caption, so as not to burden  
6 the Court this afternoon or rushing your  
7 lunch.

8 THE COURT: That's okay with you guys?

9 MR. SCAROLA: Yes, sir.

10 MR. LINK: And I think we can also deal  
11 with the request to admit once we have the  
12 documents.

13 THE COURT: And the only thing that  
14 would be left for consideration would be the  
15 deposition transcripts. And you promise to  
16 get that to me --

17 MR. LINK: May we have 15 to 20 days to  
18 do that?

19 THE COURT: I said 20.

20 MR. LINK: Thank you.

21 THE COURT: Let's go ahead and work on  
22 orders so we don't run into the same issues  
23 that we run into with other cases, as  
24 truncated earlier.

25 MR. LINK: We will take the labor and

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run them by Counsel.

THE COURT: All right. Since you are being paid by the hour, I'm sure Mr. Scarola would appreciate it.

- - -

(The above proceedings were concluded at 12:04 [REDACTED].)

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COURT CERTIFICATE

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 27th day of August 2018.

\_\_\_\_\_  
SONJA D. HALL