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EPSTEIN

v.

EDWARDS

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THE COURT: Good morning. Welcome back. All right as I understand it, you want to start with the issue of the motion to amend the answer and affirmative defenses. Is that accurate?

MR. SCAROLA: That is, sir. Yes.

THE COURT: I will be glad to do that. I have reviewed the materials from both sides. Thank you for that.

MR. LINK: Whenever you are ready, Judge.

THE COURT: Whenever you are ready, go ahead, sir.

MR. LINK: Good morning, Your Honor. Scott Link on behalf of the plaintiff. It is our motion for leave to amend the affirmative defenses. You have to put that in context, Your Honor.

That is, why do we need affirmative defenses that sound in defamation, and they do. The reason they do is because the counter-plaintiff in this case has made it very clear that they are trying the allegations in the statements in the complaint.

At the last hearing, Mr. Scarola handed this out and showed us very clearly what their plan is. And this is their plan. They believe that we're trying the factual allegations of the complaint to see whether they were true or false.

As this Court knows, in the recent Supreme Court case dealing with this case, the Supreme Court made it very clear that there is a narrow exception to the litigation privilege. That exception is for malicious prosecution. But the Supreme Court told us in that opinion Your-Honor -- I will share it with the Court -- the Supreme Court told us in that opinion, Your Honor -- gave us a roadmap.

The Supreme Court told us.

THE COURT: That Debrincat, D-E-B-R-I-N-C-A-T versus Fischer --

MR. LINK: That's correct, Your Honor.

THE COURT: -- from the Florida Supreme Court, So.3d cite that the parties are well familiar with.

MR. LINK: If you are look at this case, you will see that the Supreme Court

made it very clear and gave us a roadmap. The Supreme Court said really simply -- and it makes sense -- that if the litigation privilege applied to the elements of a malicious prosecution action, there would never be a malicious prosecution action.

Plus the Supreme Court reaffirmed that every statement made in the proceeding itself: the allegations of the complaint, the statements of witnesses, the statements of lawyers, and the statements of the judges are absolutely protected. That's why the court lays out the elements. And the elements the court lays out talk about only the actual initiation of the lawsuit.

So if you turn, Your Honor, to page two of three, the court sets forth the elements. We will talk about these elements. The Supreme Court really give us clarity.

At the bottom of the page two, it talks about an original criminal or civil judicial proceeding -- an original proceeding. That proceeding, according to the Supreme Court, when you read the Fourth DCA division that's cited, is the filling, it's the

commencement, it's the action.

If you think about where this law came from, it comes from the criminal system. If you think about the criminal system, simply issuing a warrant, starting an investigation, filing a criminal complaint in and of itself can cause injury to your reputation.

So the Supreme Court tells us the act that is not protected by the litigation privilege is the initiation of a lawsuit.

If you look at the probable cause element, it says there was an absence of probable cause for the original proceeding. It doesn't say claim. It doesn't allegation. It doesn't say statement.

So Mr. Scarola tells us three times during this hearing on the 29th that what he plans to do -- what he plans to do -- reading from this transcript at page 82 -- the first thing Your Honor needs to determine is the issue we have been focusing on. What are the factual allegations that we claim were maliciously prosecuted, and then he goes to our complaint.

According to the Supreme Court, our complaint is protected. We cannot commit defamation. We cannot commit any action that's based on wrongful words. The only thing that's available is a claim for malicious prosecution focused on the initiation of the suit.

On the last page of this opinion from the Supreme Court, the court tells us this: The filing of a lawsuit and the joining of a defendant is the commencement of a judicial proceeding.

It then says, really importantly, an action for malicious prosecution which is based as a matter of law on causing the commencement of an original judicial proceeding -- that's what we need focus on.

So if we are trying the statements and the allegations of the complaint, if that's what we are doing, then we have to have affirmative defenses that protect us from a claim based on allegations in the complaint.

The last thing I want to show the Court, on Friday after our hearing, I took the deposition of Mr. Edwards' expert.

May I approach. During the deposition of Dr. Jansen -- if you turn to page three, four and five, Your Honor, you will see what their expert wants to do.

The assignment was the level of dissemination of defaming statements -- defaming statements. That's on page three.

Page four. I refer to ties statement associating Mr. Edwards with the illegal activities of Mr. Rothstein's, the results of Mr. Rothstein's lawsuits as the defaming statements.

So what they plan to do is put on an expert to demonstrate that the allegations of the complaint were defaming and caused damages, the defamation action.

There's nothing in the elements of malicious prosecution that make it relevant for an expert to get on the stand and talk about defaming statements in the complaint.

In fact, to do so violates the roadmap that the Supreme Court just gave us. There is no better authority than Debrincat on how this case should go forward. But if they're going to be allowed to put an expert on to

talk about defaming statements, if they are going to be allowed to put the allegations of the complaint and test their truth or falsity, which are protected by litigation privilege, we then need to have affirmative defenses that sounds like defamation.

Last point I want to point out in Debrincat, Your Honor is this. It's in the analysis, and it's the second sentence of the analysis. Te law has long recognized that judges, counsel, parties and witnesses should be absolutely exempted from liability to an action -- this is the key -- it doesn't say to defamation -- to an action. To be specific, to any action for defamatory words published in the course of the judicial proceeding.

So if we are exempted from liability for the words published in the lawsuit, then we don't need these affirmative defenses, because they will then have to focus on probable cause for the judicial proceeding. But if they are going to by allowed to bring in allegations of the complaint, truth or falsity, then we need these affirmative

defenses.

Otherwise, if you look at our answer in affirmative defenses, Your Honor, we don't have any. The reason we don't have any is we didn't raise advice of counsel. There's not a statute of limitation defense. We have no affirmative defenses because we are defending a malicious prosecution action.

But we ask this Court, if this Court is going to allow them to try the truth or falsity of the statements in the complaint, that we be allowed to amend our pleading.

THE COURT: You are not seeking to amend to affirmatively defend on advice of counsel?

MR. LINK: We are not, sir. They are all defamation affirmative defenses.

THE COURT: Well, there's also the constitutional affirmative defenses that you are seeking to interpose dealing with the petition to file against the government or something along those lines.

MR. LINK: Those are all defamation. They are all protection of speech.

THE COURT: I presume that falls under

that same umbrella.

MR. LINK: It does, Your Honor. Everything that we've asked the Court to allow us to amend is designed to protect our record, frankly, that we believe that everything in our pleading -- let me give you an example.

The Court dismisses Mr. Edward's count for abuse of process based on litigation privilege. At the end of the suit when we win, if we sued Mr. Scarola for malicious prosecution in going forward with this case, are the statements he's made in this proceedings -- for example, Mr. Epstein is a serial child molester -- are they protected because they're part of this proceeding? Or does he waive the privilege somehow because we bring a malicious prosecution action?

This court tells us very clearly we could not sue Mr. Scarola for his statements. It is no purpose in the malicious prosecution action.

But that's what this door is opening. That's what they want to do. And we suggest to Your Honor, we don't want to come back a

second time. We would like to try this case once. We would like to focus on the elements of malicious prosecution and not try a defaming words case in front of the jury.

Thank you, Your Honor.

THE COURT: Okay thank you, Mr. Link.

Who is going to arguing on behalf of Mr. Edwards? Mr. Burlington?

MR. BURLINGTON: May it please the Court. I am Phillip Burlington representing Brad Edwards.

I have not heard anything today that justifies their claim that the rights to petition the government provides them an affirmative defense as they allege in their fifth affirmative defense. That has nothing to do with defamation. We have explained why it is not a defense to a malicious prosecution case. Because as the US Supreme Court has stated very clearly, baseless litigation is not protected by the privilege to engage in petitioning of the government under the First Amendment.

I would note that even considering the

presentation here, there is not a single case from any jurisdiction cited by them that says that any of these defenses are valid in a malicious prosecution case. Not a single case.

They have gone so far as to site the Noerr/Pennington cases, which are anti-trust cases involving efforts to lobby the legislative and executive branches of government, and they have taken that and tried to apply it to the malicious prosecution case. That makes to sense.

Now, as to the other defenses, they have also passed over two very critical considerations which were not addressed in their motion -- and have not been addressed here, and I hope will not be addressed for the first time in the rebuttal, since we addressed it very squarely in our response -- and that is, there are three grounds to deny a motion to amend. One is where the party has abused privilege. The second is where the amendment would prejudice the opposing party, and then the third is whether the affirmative defenses

would be futile because they are legally insufficient.

Now, in this case they've raised five affirmative defenses eight years into the litigation and mere weeks before of this special setting that this Court had for this month.

We pointed out in our response. There was no explanation why it took them eight years to dream up these affirmative defenses. That is an abuse of the privilege, waiting until the eve of trial, after discovery is almost completely concluded to raise multiple affirmative defenses, many of which raise factual issues that would require further discovery, possibly new experts, and maybe even counter pleading. Those reasons in themselves are sufficient to justify denial of this motion.

But, I have spend more time on the futility, because I certainly understand that Your Honor has always expressed concern that people are allowed to amend. And again, we don't think that they should based on the abuse of the privilege and based on

the prejudice to our client. But I will get back to the legal insufficiency.

The argument that the Debrincat case gives a roadmap is simply wrong. Debrincat is not a roadmap. It is a dead end. It was the determination that the litigation privilege does not apply to a malicious prosecution case.

And this is very clearly stated in the paragraph preceding its conclusion. This court has never held that the litigation privilege protects a litigant from the claim of malicious prosecution. And other district courts have recognized that the litigation privilege does not act as a bar to a malicious prosecution claim.

If the Florida Supreme Court was holding that it does not bar proof of the first element of malicious prosecution, they would have said that and said it remains in force for the other elements. Clearly they would not have been as categorical as they were.

What they have done is try to parse out language, again trying to make the roadmap

when it's clear this was intended to be a dead end for that privilege.

And they talk about it's only the initiation of the claim that subjects them to liability. But even in Debrincat when it talks about the first element, it says an original criminal or civil judicial proceeding against the present plaintiff was commenced or continued. In this case, obviously, it was continued.

They include the other elements, which include that there was an absence of probable cause for the original proceeding. That means we can prove that the factual allegations were false, that the legal claims were invalid, as a matter of law, and nothing in Debrincat precludes that.

It was a simple, very short decision for the Florida Supreme Court. And it simply said the privilege does not apply to malicious prosecution claims.

But even putting aside Debrincat, we have never had a defamation claim. We have never alleged it. And they have this string site of cases that talks about how, well --

it's called the single publication rule. If your cause of action is based on a defamatory publication, you can't avoid defenses to defamation or the statute of limitations by pleading things like intentional inflection of emotional distress or tortious interference with business relationships, so forth and so on.

It has nothing to do -- not a single one of those cases had to do with malicious prosecution. The only one that comes within shouting distance is Fridovich. But in that case, the Fourth District rejected the malicious prosecution case, because that case arose out of family allegations that a family member murdered somebody, and they were essentially fighting over the estate.

They created this conspiracy to bring claims to the prosecutor to prosecute that family member for murder. That family member was ultimately convicted of manslaughter.

So the Fourth District said that's not a bona fide termination in your favor, so they eliminate the malicious prosecution.

Then they went with defamation counts and related counts. It was a certified question in Fridovich -- talks about defamation.

But they have cited no case from any jurisdiction that says that you can convert a malicious prosecution case into a defamation case, and then raise defenses that are unique to defamation cases.

And this reliance on the deposition taken recently is nothing but -- that was a -- that was an expert on damages, and damages to reputation as a result of false statements, which is an inherent part of a malicious prosecution case. An they have cited no case to the contrary.

THE COURT: You have cases that cite affirmatively to that proposition?

MR. BURLINGTON: There is a case called Mancusi out of the Florida Supreme Court that define the elements and talked about it is designed -- in fact, Debrincat says that malicious prosecution is balanced between allowing people to bring suits and protecting the reputation of the individual.

So that's one -- that's the nature of

it. I mean, the fact that there are similar elements of damage does not convert malicious prosecution to a defamation count. And they have cited no case for that proposition.

But even if we go a little deeper into these defamation claims to the defamation defenses, they are clearly invalid as a matter of law.

For example, the fifth one -- excuse me. I have already addressed the fifth one.

The sixth one claims that Mr. Edwards is a public figure. Now, as noted previously, this would raise a whole new factual set of issues plus perhaps the need for experts.

But the Gertz case makes it crystal clear that a private attorney representing a client, despite their involvement in a high-profile case, including their involvement in a proceeding unrelated to their civil proceeding is not a public figure, that you cannot convert -- they are very specific. You cannot convert a private attorney representing a client into an

officer of the court to bootstrap yourself into saying it's a public official.

And they also said in that case that we are not going to hold that someone who simply engages in their professional activities or has involvement in the community is converted to a public figure.

And what they have attached to their motion to amend, which they claim Brad Edwards made himself into a public figure is nothing more than website statements on the law firm where Brad Edwards worked that talked about some of his cases. And that's nothing more than his professional responsibility and professional relationship for purposes of getting clients.

THE COURT: Résumé.

MR. BURLINGTON: Excuse me?

THE COURT: Résumé.

MR. BURLINGTON: Sure.

And there's nothing even -- only one of them mentions Epstein.

So they have cited no case from any jurisdiction that says that a defamation count can result in either a higher burden

of proof or additional affirmative defenses based on the nature of the individual who was sued in the baseless litigation.

Then their seven affirmative defense, just asserts generally just as a matter of public concern, and thereof we have a higher burden of proof.

Again, this is rather late in the game to start changing, not only the factual issues, but the burdens of proof. But they also cite no case from any jurisdiction that says a malicious prosecution case is altered on the basis of whether there was a matter of public concern involved.

And here, inverting that notoriety of Mr. Epstein's criminal conduct into a matter public concern is somewhat of a stretch. But also, in the Gertz case there was notoriety in that criminal case. And Gertz made it very clear that the private attorney representing a client in proceedings and in related proceedings, which had a lot of publicity, did not convert him to either a public official or a public figure, and whether or not it was a matter of public

concern was not relevant.

The case that they seemingly rely on is the Nodar case, which is a Florida case where the parent went to the board of the school board to speak out against a teacher that he believed was no properly preparing the students, not properly teaching and was harassing his son.

That was a public forum. It was an executive branch, not a judicial branch. And all that the Florida Supreme Court held was in that context -- because it was a matter of public concern in the appropriate public forum -- there was a qualified privilege, and the malice would not be presumed from the defamatory statements.

Now, again, that was a defamation suit. It was nothing about malicious prosecution. But as Justice Scalia noted in his concurring opinion in the Kalina case, malicious prosecution has the qualify privilege built into it, because we have to prove, not only a lack of probable cause, but we have to prove malice, and we do not get a presumption of malice.

So that case, the Nodar case, has nothing to do with either the context of this case or the cause of action that we had brought.

And they've cited, as I've said, no malicious prosecution cases to support the idea that any of these defenses can be valid.

Now, as to the -- I believe it's the eighth and ninth affirmative defenses, they are not affirmative defenses at all.

Affirmative defense, as the Florida Supreme Court has stated, is where a defendant essentially has to admit the allegations of the pleading. But say -- even assuming that -- I have this defense or you are limited in these matters in proving your case or in your damages.

Their eighth affirmative defense simply says this is nothing but a defamation suit. That's not an affirmative defense. That is a legal proposition which they rely on to provide the predicate for the sixth and seventh affirmative defenses, but it is nothing but a statement of a legal

proposition. It is not a defense.

The last affirmative defense claims that there are known procedures that this court could put in place that could protect Epstein's due process rights in the context of the punitive damage claims. That's not an affirmative defense. That's a constitutional challenge in the proceedings of this court. While I'm not saying they can't raise constitutional challenges, it is not a affirmative defense.

I would add, they haven't specified a single thing that has happened thus far in the context of punitive damages that has deprived Mr. Epstein of any due process rights.

And I gave a brief summary in our response to all the protections that have been established in the case law, in the statutes for protecting due process rights.

And until and unless they come to you with a colorable argument that those procedures are inadequate, there's nothing for you to do in response that generic assertion that Mr. Epstein could never have

his due process rights protected in the context of the punitive damage award. But what is clear is it's not an affirmative defense at all.

So, trying to parse out Debrincat to say that the litigation privilege only applies to one element of the malicious prosecution claim, I submit is facially wrong in light of the complaint. And if they believe that Debrincat, which concludes by saying unequivocally that the litigation privilege does not apply to malicious prosecution cases, they had an obligation because they were a tag-along case. And the Florida Supreme Court, after issuing Debrincat, issued an order in our case saying that Epstein should show cause why Debrincat does not control. And in response, Epstein conceded that it did control. There is no to parse out anything in Debrincat which would create entirely new law in Florida about parsing out elements of malicious prosecution for either purposes of forcing the plaintiff into a position of having a defamation claim or of taking out

specific elements of a malicious prosecution claim and saying, oh we have defamation defenses to these.

The falsity of the statements in the complaint are entirely different from a publication, because it is the act of triggering the judicial mechanism forcing my client to defend, litigate, expend funds. And the falsity of those statements goes to lack of probable cause, it goes to malice, and it is an element that we can prove caused harm, and we should get compensatory damages.

Again, they cited no case. They relied solely on Debrincat, and it is an extremely thin read upon which to entirely change the law of malicious prosecution. And I believe that Your Honor should deny the motion based on being untimely with no explanation.

None of these cases are new. Debrincat is the only one that's within the last few years. But they had time to raise that. All the others are established law. It just doesn't apply here.

THE COURT: Let me ask you to explain

for me, if you will, the issue of futility. Because usually because of Florida's policy on liberality of amendments even at trial -- cases after trial that allows for amending the pleadings -- the amendment is typically allowed, and then the affirmative defenses are attacked, traditionally by a motion to strike.

Here your arguments on behalf of your client are that these amendments are essentially futile in the sense that I analogize it with a cause of action brought by a plaintiff in a given case where the plaintiff is alleging some type of -- attempting to allege some type of cause of action that makes no legal sense, or it is barred by the existing precedent so as to make any amendments futile.

I would suspect that that same analogy could apply here. Albeit, this is the first effort, at least as to these affirmative defenses, that have been made.

But are you suggesting that under no reading of law and the facts that apply here that it would be either amendable or that

any potential amendment based on these facts and the law that have constituted these proposed affirmative defense would be futile?

MR. BURLINGTON: You are correct that normally when affirmative defenses are initially asserted in a timely fashion that the means of challenging their legal sufficiency is a motion to strike.

When a no motion to amend is presented -- especially this late in the game -- it would be a waste of judicial resources for you to allow the amendment knowing that as a matter of law those defenses are invalid.

And there are cases -- I'm not sure they're the ones cited in our response -- but I have cited case on futility where if they're legally invalid, they're necessarily futile.

And to go through the motion of allowing them to amend, requiring us to move to strike, allowing them to respond when the legal sufficiency is addressed in these memos.

They cited case law in their affirmative defenses themselves trying to justify them. So the futility is different -- not different, but the need to do a motion to strike is different when the amendment is made, when you come to the Court and seek it to exercise its discretion to allow an amendment, if it is legally invalid, there's no reason for the Court to allow it, because it would be futile. And that's one of three ways of attacking the motion to amend as discussed in all the case law.

Otherwise, to say it would be futile, I guess, we would have to get into the factual analysis of where the facts don't support it. But there isn't much difference between saying the facts don't support it and this doesn't apply as a matter of law to this cause of action.

So I believe you are fully authorized to look at the merits of these claims, which have been argued in the motion and the response -- and they've certainly had an opportunity today to argue what they thought

was the legal validity.

So to simply put that off and have another hearing on it when the question here is, do you allow amendments which I believe are clearly not valid to a malicious prosecution cause of action. So I believe you are authorized to do it on that basis as well.

THE COURT: Thank you, Mr. Burlington. I appreciate your written and oral presentation, as well, Mr. Link.

MR. SCAROLA: May I add just a little bit to that?

THE COURT: I will give you a couple minutes.

MR. SCAROLA: Thank you very much, sir.

THE COURT: After Mr. Scarola, Ms. Rockenbach, if you want to add something you are free to do so as well.

MS. ROCKENBACH: Thank you, Your Honor.

MR. SCAROLA: I don't think that it will take a couple minutes.

It was one aspect --

THE COURT: Less than that?

MR. SCAROLA: Yes, sir.

There was one aspect of Mr. Link's argument that I found extremely confusing. And maybe it's just some --

MR. LINK: Your Honor, you mind if I move so I can --

THE COURT: Feel free.

MR. SCAROLA: -- some inability on my part to comprehend the argument. But he told us repeatedly that Edwards seeks to prove the falsity of the allegations of the complaint instead of proving there was no probable cause to file the complaint. I think he repeated that statement at least three times. And quite frankly, I have no idea what that means.

In order to prove there was no probable cause to file the complaint, we must look at the factual allegations in the complaint and we must demonstrate that there was no probable cause to file those specific factual allegations. That is, we must prove the factual allegations were false, and we must prove that there was no reason to believe that they were true. This wasn't a good faith mistake.

So the issues are identical. And what they were attempting to do by way of this motion to amend is to get right back to where they were arguing last week, and that is, they don't want to ever have to defend against the claim that Bradley Edwards fabricated false charges against Jeffrey Epstein. They don't want to focus on that at all. And this is one more means by which to attempt to reargue that same position.

THE COURT: Or fabricated false claims against Jeffrey Edwards (sic) or --

MR. SCAROLA: Jeffrey Epstein.

THE COURT: Fabricated false --

MR. SCAROLA: Edwards fabricated false claims against Epstein.

THE COURT: Correct.

MR. SCAROLA: We will help each other out with that.

THE COURT: Or vice versa for that matter, that Epstein fabricated false claims against Edwards. Meaning, I am still not sure where the defendant in the malicious prosecution claim, Mr. Epstein, stands as to that issue, as to whether or not he's

conceding or not conceding.

MR. SCAROLA: That has been scrupulously avoided by the other side, Your Honor. They don't want to face that issue or even acknowledge it exists. I agree with Your Honor.

THE COURT: Thank you, Mr. Scarola.

Mr. Link, couple things that I would like you to focus on. First is that -- I appreciate your bringing it to my attention, and I have heard this before, about the punitive expert's testimony on behalf of Mr. Edwards, that his research has revealed whatever number of instances whereby Mr. Edwards' and Mr. Rothstein's names have been linked, presumably as a result of Mr. Epstein's conduct.

MR. LINK: Yes, Your Honor.

THE COURT: I haven't read it very closely. At this point I don't know much of that testimony is going to get in. But irrespective of that, what Mr. Burlington has emphasized and what the Court clearly is under the impression as to its utilization, is not to prove up any other element of the

malicious prosecution claim, except for damages.

For example, an affirmative defense to that aspect of the claim could potentially be that Mr. Edwards failed to mitigate his damages by virtue of his own zeal in seeking publicity for his representation of Mr. -- for his representation of the alleged victims and the plaintiffs in those cases against Epstein, and therefore, cause much of his own damages by exercising that zeal.

That may constitute an affirmative defense as to the damage claim, because just like a simple negligence action is concerned, damages are a necessary element, similar to the questions I had of you last week when I asked what were Mr. Epstein's damages as a result of his filing of the initial suit against Rothstein, Edwards and [redacted]. as related to factoring of those cases.

So, there's a distinction of importance that I can see here as it pertains to the affirmative defenses that have been asserted as it relates to a traditional defamation claim perhaps.

Some of these affirmative defenses, quite frankly, in handling defamation claims on numerous occasions in the past, I have never seen before. I never try to stifle creativity. But at the same time, we have to take into account, not only judicial resources, but what the essential argument of Mr. Burlington boiling it down to its very essence is you can't fit a square peg into a round hole. And that is, that the bulk of these affirmative defenses, because they deal with defamation, one, are not pertinent. Two, even if they were, it's not a defamation claim.

I certainly do not plan and will not try a defamation claim. And also, again, even if these could be conceivably construed as defamation claims, they don't pass legal muster.

Some of them, such as the affirmative defense regarding the petitioning of the government, has, in my view, absolutely no application to this case, because if it did, it would have application to any lawsuit just about that I could conceive of that

would be brought by any person, by any plaintiff, by any counter-plaintiff.

The application is completely in opposite to what we're doing here. This is not redressable by virtue of petition to government, as are, and as were, particularly at the time of those two cases, Noerr and Pennington, where there were issues of anti-trust violations and the testing of whether or not anti-trust laws were in fact being violated. And the government's -- obvious because of the Sherman Act -- the government is obviously, because of Sherman Act, interest in protecting against anti-trust violations. So there was that nexus that was clearly prevalent there.

So I really don't need further argument as to the fifth affirmative defense.

The sixth affirmative defense deals with the limited public figure. We haven't really talked about that from your standpoint. Your position as to that in light of the Gertz decision.

MR. LINK: Yes. We believe that if

defamatory statements are going to be the basis for liability and for damages so that we're moving in absolute litigation privilege from allegations in the complaint, then the fact that Mr. Edwards is a quasi public figure that puts himself out there, that advertises, that speaks about these issues, that issues press releases, talked to the press, should come in as an affirmative defense in this case.

THE COURT: How do you get around Gertz essentially saying precisely the opposite, that a lawyer -- even where a lawyer represents a high-profile client? Here these aren't high-profile clients.

My common sense thinking -- although really not a part of the decision here -- is that outside of South Florida, and had Mr. Rothstein not committed the heinous crimes that he's been convicted for in serving a sentence somewhere in the neighborhood of 50 years, Edwards would have been off the radar. There would have been no real issues, other than his connection with Mr. Epstein.

Some may argue that Mr. Epstein is far more of a public figure that Mr. Edwards is under the analysis you have suggested.

MR. LINK: He may very well be, Your Honor.

THE COURT: But that's not the issue here. I don't see how Gertz, with the plain meaning of the opinion, and the fact that the attorney in Gertz was in fact representing a high-profile client and there was afforded immunity -- which wouldn't have application here whatsoever -- I don't see the basic fundamental issue being answered or even arguable.

MR. LINK: If I can take one shot at it, Your Honor.

THE COURT: Sure.

MR. LINK: I think the difference is the fact that you represent a high-profile client does not make you a quasi public figure. It's the steps and actions that you take as a result of that.

So, the fact that the three plaintiffs that Mr. Edwards represented were not high-profile folks does not mean that he

didn't voluntarily put himself out there and create an image and a reputation for himself and put himself out there in a public way.

There are easy examples. I represent a high-profile client, Mr. Epstein. After the hearing, the press came up, I didn't talk to the press. I didn't put myself out there. Other lawyers will do that. They will give press releases.

Mr. Edwards went even beyond that. He used these cases to promote himself in a way that goes beyond simply representing a client.

MR. SCAROLA: Your Honor, excuse me. There is no record evidence to support that assertion at all. Absolutely none.

THE COURT: I appreciate that. Thank you, Mr. Scarola.

You may proceed.

MR. LINK: So there is a distinction. Simply representing a high-profile client does not make you a quasi public figure. But doing things that put yourself out there, contacting the press, giving interviews, giving speeches, making

yourself -- putting yourself out there as a specialist in this particular area and seeking press and accolades does. That's the distinction.

So the fact that I'm representing Mr. Epstein, who may be a more well-known figure, doesn't mean I have done anything to assert myself into the public view. That's the distinction I would draw, Your Honor.

THE COURT: Anything else you would like to speak to?

MR. LINK: Yes, if I can. I just want to touch on a couple points that Mr. Burlington made and a point Mr. Scarola made.

Here is the key to this and these affirmative defenses. And Your Honor asked a great question. You asked Mr. Burlington if any cases -- any of the malicious prosecution cases say that you can take false statement -- allegedly a false statement from a complaint -- and use that to demonstrate lack of probable cause or damages. And he pointed to the Mancusi case.

Your Honor, we looked at this case last time that we were here. It's a case that Your Honor pointed out, I believe, that talks about the mixed question of fact of law and the probable cause. There's no discussion of damages other than punitive damages in the case. It sets forth the standards that your court told us about and recognized, which is, if there's no dispute as to the facts that were relied on in making the decision to bring a lawsuit, then it's up to you. And I said Your Honor may decide enough or not enough. It's your call. It's not the jury's decision. That's what Mancusi says.

There is not a case that we have seen -- and we looked at about 65 -- 67 cases, Florida cases, that discussed that you can use an allegation in the complaint to either show lack of probable cause, based on the truth or falsity, or use it to establish damages. And here is why.

Mr. Burlington doesn't think that the Supreme Court case answers the question, but I think it does. And here is what I want to

focus the Court on. It is not, Your Honor, simply the first element of the malicious prosecution element that focuses on civil judicial proceeding. This is from the Supreme Court case.

Every element, if you look, an original civil judicial proceeding. It doesn't say count, allegation, complaint. It talks in the big picture. Why? Because once the lawsuit is filed, that's the damage, the filing of the lawsuit, not what you plead in it. That's protected by the litigation privilege.

The present defendant was the legal cause of the original proceeding. Second element uses the term original proceeding. Third element: Determination of the original proceeding.

THE COURT: You think that the terminology, "an original criminal or civil judicial proceeding against the present plaintiff was commenced or continued," seems to bring in, at least arguably, more than just the initial complaint?

MR. LINK: Yes. But the continue has

been defined very carefully. Here is what the court said. The court says that continued means this: One, if I'm a new lawyer coming in, I don't have a defense if there was not probable cause.

If I come in, don't do my homework and I continue with the proceeding, that's one aspect.

The second aspect is, I may have probable cause when I start, but if during the course of the lawsuit something comes to my attention that makes me now conclude that what I thought was true is not true, I have to stop, Your Honor. I don't get to keep going. But it has nothing to do with the allegations of the complaint, what I say during my deposition, what you say during the case, what the other lawyer say during the case.

And if you look at every one of these elements -- really important to look at every one of these elements, except for malice. Use of the words the original proceeding.

Six, the plaintiff suffered damage as a

result of the original proceeding. Again, that's the filing of the complaint.

And you look at Florida's jury instructions --

Mr. Scarola, I don't have them, but they are the standard jury instructions.

-- and look at damages, 406.12, Your Honor, on malicious prosecution, you won't see anything in there about the publication of a false statement or damage caused by a false statement.

Contrast that with defamation, which it specifically says if you find that there was a false statement, it's a whole different standard for damages.

THE COURT: Again, we are going to need get to that bridge when we come to it. But the malicious prosecution damages state, quote, if you find for defendant, you will not consider the matter of damages. If you find for the plaintiff, you should award the plaintiff an amount of money that the greater weight of the evidence shows would fairly and adequately compensate him for such loss, injury, damage as the greater

weight of the evidence shows was caused by the institution -- and then it also parenthetically states -- continuation of the proceeding complained of.

MR. LINK: So it depends on the focus. Mr. Scarola has not said -- I don't think -- he has always said we're focused on the initial filing. There's not probable cause for the initial filing. That's what he has told us. He has not said there was probable cause at the beginning, Your Honor, but down the road Mr. Epstein learned something and he should have stopped then.

So based on exactly what you read, it focuses on, was caused by the institution of it, the filing of it.

THE COURT: Continuation is one of the words that's utilized right there in bold, black print.

MR. LINK: If he was arguing that it was continuation to cause damages. He's not. He's not, I don't believe -- unless he's changed his mind.

THE COURT: Is that true?

MR. SCAROLA: No, Your Honor. It is

not true. We contend there was no probable cause to initiate this proceeding, there was no probable cause to continue the proceeding. The initiation and continuation of the proceeding caused damage to Bradley Edwards, both because no probable cause ever existed. So it was both initiated and continued in the absence of probable cause.

MR. LINK: Your Honor, that only makes sense. If you think what about Mr. Scarola just said, if it's not probable cause when I file it, and I continue with the lawsuit, then there was never probable cause.

But the continuation isn't I filed it and it should have been eliminated that day. The second day after the lawsuit it's already been continued.

THE COURT: I will give you two minutes to wrap up. We had planned on 40 minutes. We are now going on 55. But again, I want to give both sides the opportunity --

MR. LINK: I appreciate that.

THE COURT: I have read the materials and I have heard the arguments. I don't want to get into repetition. So if there's

anything you want to say to rebut Mr. Burlington's argument or his written presentation, feel free to do so.

MR. LINK: As I have handed the court the Mancusi case, Your Honor, which does not say anything about statements or allegations in the complaint or damages other than punitive damages.

The Supreme Court tells us that there is still a litigation privilege afforded to every litigant. The narrow exemption has to do between when you make the decision to institute --

Mr. Scarola said that he sees them as the same thing. They are very different. One draws a line when you file the lawsuit. And what's on this side of line and before the lawsuit is filed is what is in your mind when you make the decision. And that is not protected.

But what you plead in the complaint, and the truth and falsity of those allegations is absolutely protected. And that's what the Supreme Court just told us.

Thank you, Your Honor.

THE COURT: All right. Thank you, Mr. Link. The Court is prepared to rule. I am going to go through it one step at a time and proceed through the fifth through the ninth affirmative defenses.

The Court finds, as far as the fifth affirmative defense is concerned that the pleading made here has no relationship whatsoever to the case at bar. This is not a forum of petitioning government for redress. The Court has stated, and in agreement with Edwards' position, that neither Pennington nor Noerr, N-O-E-R-R, have any application to this claim anymore than it would have to any generic claim brought by any plaintiff.

This is not an anti-trust case. This is not a case where the government involvement is either directly or indirectly at issue as it relates to the affirmative defense generally claiming that this is a, quote, forum of petitioning government for redress, end quote. It is simply inapplicable. Any amendment along those grounds will be futile.

As far as the sixth affirmative defense, the Court finds that as a matter of law that the Gertz case speaks to this issue broadly and specifically, and does not place Mr. Edwards in the position of a general or limited purpose public figure. Hence, any affirmative defense that rely upon that theory are, again, completely, entirely inapplicable to the matters that are addressed in this case.

The seventh affirmative defense falls because of the same reason. Additionally, the suggestion that in accordance with the First and Fourteenth amendments of the United States Constitution and Article 1, Section 4 of the Florida Constitution, Edwards may not recover presumed or punitive damages without clear and convincing evidence that Epstein knew of the falsity of the claims that he made against Edwards were in reckless disregard of the falsity of these claims would reconstitute argument and a denial, as opposed to a confession and avoidance as required by Florida law so as to constitute a valid affirmative defense.

Again, it primarily relies on Gertz, which as I found earlier, is contrary directly to the position espoused by Mr. Epstein. And the Gertz decision, as we all know, is a United States Supreme Court decision found at 418 US 323, 1974.

The eighth affirmative defense specifically addresses defenses to a defamation claim. It states, quote, Edwards' claims are nothing more than defamation claims which are barred by defenses applicable to defamation claims as set forth in the defenses above.

A plaintiff may not avoid defenses that apply to defamation actions by characterizing them as torts which are not subject to those restrictions, as the court pointed out in agreeing with the position taken by Edwards, that is, that that is not a defamation claim. This will not be tried as a defamation claim. And any issues as to the utilization of Mr. Edward's name in print linking to Mr. Rothstein and presumably -- again, I haven't read in detail the proposed expert's report or

analysis, or have seen his deposition transcript -- but the Court will certainly be amenable to motions that may limit that testimony so that we do not blur the fine line between what may be construed as defamation and malicious prosecution.

But certainly the Court understands -- and was under the impression even before reading the brief by Mr. Burlington -- that the claims here were one of damages as it relates to this -- allegedly false statements or statements that linked Edwards and Rothstein together, which if attributable to Mr. Epstein which are brought before the jury, they could constitute damages.

So again, there's no applicability to defamation. It's generic, general manner in which the defense is phrased would not pass legal muster as well, and any attempt to amend would be futile in this Court's view because of the distinction legally between defamation and malicious prosecution.

As far as the ninth affirmative defense is concerned, again, in agreement with the

position taken by Edwards, I find that the built-in remedies that are already established in Florida law will provide any safeguards that are sought by Mr. Epstein as it relates to the punitive damages. And merely a recitation of the law does not constitute confession or avoidance as far as the Court is concerned.

It would be similar to saying words to the effect that the rules of evidence shall apply to this case. That is, that there's an application of the Fifth and Fourteenth amendments of the United States Constitution and Article 1, Section 9 of the Florida constitution guaranteeing due process.

In any case where punitive damages are brought, those built-in due process law -- whether decisional or statutory, constitutional or otherwise -- are all built in to the already existing Florida law. And the ninth affirmative defense is superfluous, and it would be no reason to allow amendment. It's simply a statement of the law and not a confession of avoidance.

So the Court finds, thereafter, that

each of the affirmative defenses would constitute the improper affirmative defenses would not be subject to amendment because of futility -- the Court has addressed each of these affirmative defenses in requisite detail finding that they are either in opposite, that they are contrary to establish law and thus would be futile to try to amend, particularly where I referenced the Gertz decision as well as the anti-trust cases that were found to be completely and entirely in opposite to the claims made here.

This is not a defamation case. It will not be treated as such. It has been represented in open court by Edwards' counsel that any issues regarding the link between Rothstein and Edwards are going to be used solely for damages purposes. And the Court has not been asked at this juncture to limit any such testimony, but is amendable to taking up any motions in that regard and will treat those at such time.

Again, the ninth affirmative defense is simply a recitation of law that is already

built in and well-known and even conceded by the parties is not a confession of avoidance, thus making each futile in terms of attempting to amend.

I would ask for an order confirming the Court's ruling, please, from the Edwards side.

Anybody needs a break?

MR. SCAROLA: We are ready to proceed, Your Honor, if the Court is ready.

Your Honor, we had started off last week dealing with issues with respect to the Fifth Amendment. Your Honor had asked us to -- or we had actually volunteered to specifically identify the limited questions that we would wish to place before the jury. We volunteered that we would identify the limited questions that we wanted place before the jury?

In light of Your Honor's statement that we should be focusing only on the civil claims against the three plaintiffs represented by Mr. Edwards, we have done that. And I want to present the Court with packets that we have presented to opposing

counsel.

And while the package itself is thick, it's only thick because we have provided Your Honor with the backup information.

In this motion, there are specific questions and answers, so that Your Honor can very quickly take a look at the questions that we propose to address and the assertions of the Fifth Amendment in response to those questions.

MS. ROCKENBACH: Your Honor, may I respond?

THE COURT: Sure.

MS. ROCKENBACH: As I indicate to Mr. Scarola this morning, he filed those yesterday afternoon. And I am happy to review them and go over them and present argument to the Court perhaps this afternoon or Thursday when we have the continuation of this hearing.

But having received them yesterday afternoon and not prepared to take them up right now, I would suggest that perhaps the better place to pick back up on the pending motions is precisely where we left off on

November 29th, which was Exhibit 9 on Mr. Edward's Exhibit list.

THE COURT: I am certainly more prepared as well to go through that. I would like to get a chance to read it.

As you know, I do the best I can to try to read everything that comes in and familiarize myself with the context. So I'm going to sustain Ms. Rockenbach's suggestion and objection to going forward with this particular issue at this time.

Let's go back to the evidentiary issues. I am also prepared to discuss, as well -- and I don't know whether it's still on the table -- I presume it is -- it's the automatic stay issue.

So if there's any reason that Mr. Burlington needs to be here -- because I believe there's been some request that one of the attorneys -- I presume to be Mr. Burlington -- had to leave, which is why they wanted to speak about this affirmative defense issue and the denial of Epstein's request to amend his answer.

MR. SCAROLA: Mr. Burlington, Your

Honor, does not need to be here for the automatic stay issue. We wanted, for purposes of conserving his time, to be able to address the one matter that he would be arguing today, and we have done that.

He may or may not be able to stay any longer, but he is not required to be here for the other matters.

With regard to going through the exhibit list, I had proposed to opposing counsel, and I think I managed -- I think I referenced this with the Court also during the hearing that I am prepared to agree that I will not reference any of those specific exhibits that the defense identifies as a problem in opening statement. And I won't -- I won't reference them with a witness unless and until Your Honor has made a determination that it is appropriate for us to do so.

To go through every listed exhibit and obtain from Your Honor a ruling that obviously is not going to do any more than what I am prepared to concede to do voluntarily, respectfully doesn't make any

sense to me. I don't know why we are going through this process, because the most Your Honor could do would be to say, I will give a preliminary indication. At such time as the evidence is offered, we will make a determination as to whether a predicate exist to admit it or not. So I'm willing to do that.

I think we are absolutely wasting our time to go through the large number of exhibits that you've identified for purposes of getting to exactly the point where I am willing to move voluntarily.

THE COURT: Well, couple things, and that is this. We are always mindful -- and I am speaking about now trial judges -- but attorneys as well -- I know any good attorney, such as all who are sitting in this room, are certainly well aware of ensuring that the jury's time is spent in an efficient manner. That's why the overwhelming federal case law -- because Daubert we don't know if it's going to remain law here in Florida -- but that's why the overwhelming cases on the Daubert issue

speak to actually disallowing Daubert motions, for example, from being heard during the trial for the very purpose that I just cited. And that is, that these folks are coming in as volunteers, often reluctantly, taking significant amount of time away from their businesses, jobs, families to be here with us, should not have their time wasted if we can get done on the front end what may not need to be done during trial.

So I'm comfortable with going through the exhibits, because there may be some apparent -- at least from my vantage point -- reasons why some exhibits should or should not be admitted or not admitted.

And as I pointed out -- and you are correct Mr-Scarola in your global observation, that because the law, more recently than in the past, has, as I earlier indicated on November 29th, that the appellate courts recognize what they term the fluid nature of motions in limine, which is essentially what we're dealing with here when we talk about exhibits.

The Court will have the opportunity -- and should have the opportunity that if a contested exhibit comes to fruition during the trial to be able to either augment its decision, change its mind, or confirm the decision made pretrial.

But I disagree that it is a waste of time because a lot of the arguments can be made now. I can digest those arguments. I won't forget, and I won't forget the context of what those arguments are in relation to exhibits. So I would like to proceed, as recommended by Epstein's counsel, to go through what we can go through.

We will do it in a little more of an expeditious fashion, and that is, if I find there's something that really does need absolutely, without question, context for me to make that decision, then I will indicate to you that rather quickly in that regard so we don't waste too much time.

But I think we can go through those with some comfort to know at least what the Court is thinking from that standpoint, perhaps ruling at this point, with the

caveat that consistent with motions in limine and the recognition by the appellate courts -- much to my delight -- that there are often situations where situations will change and context is introduced to cause the Court to, perhaps, vary its decision in some regard. But that is afforded to me once trial is underway.

MR. LINK: Your Honor, before we start, can I take you up on your three-minute break opportunity, please.

THE COURT: Sure. Not a problem. Take a few minutes. Come on back about five minutes, please.

(A recess was had 11:16 [redacted]. - 11:24 [redacted].)

MR. SCAROLA: May I make a procedural inquiry, Your Honor?

THE COURT: Yes.

MR. SCAROLA: I assume that we are starting on page 23 of Jeffrey Epstein's revised omnibus motion in limine. Is that correct?

THE COURT: That's what I am understanding.

Ms. Rockenbach?

MR. SCAROLA: That's where we left off.

MS. ROCKENBACH: Yes. The exhibit section, which should be letter B.

MR. SCAROLA: Well, the specific exhibits that you are objecting to are identified in this motion, correct?

MS. ROCKENBACH: Actually, we stopped -- we left off as Mr. Edwards' exhibit list and we are on number nine.

The revised omnibus motion in limine, identified examples of the objections that we had. And we have listed and filed our objections to the exhibit list.

THE COURT: Where is the list of exhibits?

MR. SCAROLA: If you have an extra copy, I need one also, please. I gave mine to Sonja at the end of the last hearing. And I was assuming we were going to be basing this discussion on the motion.

MS. ROCKENBACH: Your Honor, may I approach? I have a copy for Mr. Scarola. It is Mr. Epstein's amended exhibit list that we were reviewing.

THE COURT: I actually have it.

Thanks.

MS. ROCKENBACH: You do. Okay.

Our objections were filed November 15. That's obviously a separate document.

THE COURT: That I will take.

MR. LINK: Your Honor, they are listed in the motion starting on page three.

THE COURT: I thought those were just exemplars.

MR. LINK: In the omnibus motion in limine, it actually lists, I think, every single one of the exhibits. They are identified in here. So they are in two places.

THE COURT: Page three of the revised omnibus motion in limine?

MS. ROCKENBACH: Your Honor, it's the original omnibus --

THE COURT: Is that part of the --

MR. SCAROLA: If we are working with the witness list -- I mean with the exhibit list, we will just work with the exhibit list.

THE COURT: Let's do that.

MR. LINK: That works for us, Your

Honor.

THE COURT: Thanks.

MR. SCAROLA: So I assume we are going to take these one at a time?

THE COURT: Yeah.

MS. ROCKENBACH: Your Honor, the next one that we were on was number nine, Mr. Epstein's flight logs -- if I may approach, I would like to give Your Honor what was provided to my office from Mr. Scarola. And it is a sampling, because I think there were over 200 pages for this particular exhibit.

We've objected basis of relevance, of 90.403, judicial value. And these are flight logs of my client's planes. They have no relevance to what is being tried in this case, which is malicious prosecution.

Mr. Edwards testified that he knew that his clients were not on my client's plane, so the flight logs are completely irrelevant.

THE COURT: Okay, Mr. Scarola.

MR. SCAROLA: Yes. Your Honor, one of the alleged bases for Jeffrey Epstein having

concluded that Bradley Edwards was a knowing participant in the Rothstein Ponzi scheme is that the scope of the discovery that Bradley Edwards was seeking once he became a member of the Rothstein, Rosenfeldt, Adler firm expanded to include matters that he was not previously focusing on and which had no reasonable basis to lead to the discovery of admissible evidence.

So he alleged that the abusive discovery that Bradley Edwards engaged in gave him reason to believe that he was only doing these things because he was knowingly supporting the Ponzi scheme.

So Bradley Edwards obviously has an opportunity to explain what he did and why he did it. Yes, I was seeking discovery with regard to the airplane flight logs and who was on the airplane. And the reason why I did that was, because even though my own clients were not transported on the plane, I know that other young women were transported on the plane for purposes of prostitution and sexual abuse. And I can prove that through the flight logs that list the other

occupants on the airplane, including children who were being transported by Jeffrey Epstein.

Part of what makes this is a viable federal claim is the intrastate and international transportation of children for purposes of prostitution.

The federal law, specifically federal rule 41.5 -- excuse me 415.5(g) -- and I referenced this in earlier argument to the Court -- expressly allows the introduction into evidence in any case involving a sexual offense against a child, the commission of any other sexual offense against a child.

So, I was seeking evidence to prove a pattern of abuse of children including their transportation for purposes of prostitution. And I was doing that through flight logs that identified these children, flight logs that identified other witnesses, taking the depositions of pilots. And so all of this is information than rebuts the assertion by Jeffrey Epstein that this was an abusive discovery effort that supported my conclusion that Bradley Edwards was a

knowing participant in the Ponzi scheme.

That's what he alleges. In fact, portions of the deposition of Bradley Edwards have already been identified by the defense as their intending to introduce this in evidence before the jury.

I have some of those excerpts, if you Your Honor needs to take a look at them. They are offing that evidence with regard to these matters as part of their support for the lack of Bradley Edwards' probable cause to conduct this discovery, the assertion that this was an abuse of discovery process.

Now, that's what they alleged in their complaint. Those specific allegations are included in the complaint. Those are false allegations.

THE COURT: Show me those allegations that you are suggesting?

MR. SCAROLA: From the complaint, Your Honor, or from the deposition testimony?

THE COURT: Either way, or both.

MR. SCAROLA: Let me do both, then.

THE COURT: Thanks.

MR. SCAROLA: It's a little bit

difficult for Your Honor to see on these copies what the defense has designated, but on page 153 it starts at line two and continues through -- it looks like the bottom of that page. And then on 276, 277, 278 and 279, it's most of all of those pages.

Then in the complaint, the allegation in paragraph 35 -- and I will pause, if Your Honor would like me to do that, while you are reading that.

THE COURT: If you will take a moment please. Thanks.

I don't see much as far as what is set forth in the latter pages of the deposition of Mr. Edwards that even mentions plane or it's connection with the alleged underaged individuals on that plane.

Let me look at the complaint. Paragraph?

MR. SCAROLA: Thirty-three, 34, 35, 36.

THE COURT: Okay. This is directed to primarily to Mr. Rothstein. It says "and others." But it says, quote -- paragraph 34 -- Upon information and belief, Rothstein

and others claimed their investigators discovered that there were high-profile individuals onboard Epstein's private jet where sexual assaults took place and showed D3 -- and possibly others -- copies of a flight log purportedly containing names of celebrities, dignitaries and international figures.

Remind who is D3?

MS. ROCKENBACH: One of investing companies that was being defrauded by Rothstein.

THE COURT: Okay. I have read those other ones. Are there any other --

MR. SCAROLA: Paragraph 35, Your Honor, then specifically references the litigation team. As you recall, the litigation team is defined as including Bradley Edwards.

THE COURT: Thirty-five. For instance, the litigation team relentlessly and knowingly pursued flight data and passenger manifests regarding flights Epstein took with famous individuals knowing full well that no underaged women were onboard and no illicit activities took place. Rothstein

and the litigation team also inappropriately attempted to take the depositions of these celebrities in a calculated effort to bolster the marketing scam that was taking place. End quote.

There's a 40 something that was mentioned?

MR. SCAROLA: I don't know if Your Honor took a look at 36, but that's a specific reference to Mr. Edwards and his conduct of the discovery, and then 42(k).

THE COURT: Thirty-six. One of plaintiffs' counsel, Edwards, deposed three of Epstein's pilots, and sought the deposition of a fourth pilot. The pilots were deposed by Edwards for over 12 hours, and Edwards never asked one question relating to or about E.W., [redacted]. and Jane Doe as it related to transportation on flights of RRA clients on any of Epstein's planes. But Edwards asked many inflammatory and leading irrelevant questions about the pilots' thoughts and beliefs, which could only have been asked for the purposes of pumping -- that word is used in quotes --

the cases and thus by using the depositions to sell the cases -- or a part of them -- to third parties, end quote.

42(k). Told investigators, as reported in an Associated Press article, that celebrities and other famous people had flown on Epstein's plane when assaults took place. Therefore, even though none of RRA's clients claim they flew on Epstein's planes, the litigation team sought pilot and flight logs. Why? Again, to prime the investment pump, enquote, with new money without any relevance to the existing claims made by RRA the clients, end quote.

MR. SCAROLA: Our position, obviously, is Your Honor, that having made those specific allegations in the complaint, specifically allegations that know assaults took place on the plane, Mr. Epstein knew that that was untrue. He knew that children were being assaulted on the plane, he knew that there very high-profile individuals who for were present on plane. And Bradley Edwards had a reasonable basis to conduct this discovery pursuant to applicable

Florida law and applicable federal law as well as, because it was reasonably calculated to lead to the discovery of admissible evidence.

So the flight logs are clearly relevant and material for that purpose, as is all of the evidence with regard to what Mr. Epstein knew was occurring on those airplanes. And that directly contradicts what is included in this complaint as a basis for his belief that Bradley Edwards was fabricating these claims.

THE COURT: Thanks, Mr. Scarola.

MS. ROCKENBACH: Your Honor, may I use the Elmo for a minute?

THE COURT: Sure.

MS. ROCKENBACH: I really appreciated Mr. Link's presentation this morning based on the law, because after the November 29th hearing, I went back and I spent a good part of the weekend looking at malicious prosecution cases, because I thought I must have missed something. I must have missed something, because all I hear Mr. Scarola in court saying he's going to prove that the

allegations in the original proceeding that my client filed are false. And I never knew that to be a malicious prosecution action.

But my research yielded what Mr. Link indicated this morning, which is the Debrincat case is the blueprint for this trial. The Debrincat case actually has the most guiding principle in it for this court, which is going to, I think superimpose the entire exhibit list of Mr. Scarola as it relates to a lot of these exhibits that go to one of the other lawsuits, whether it's Mr. Edwards's lawsuits on behalf of the three women who sued Mr. Epstein and was settled in 2010 -- that case is over -- or the exhibits go to one of the other lawsuits.

The statement in Debrincat that's so important is that Your Honor, Mr. Scarola and I, parties and witnesses, should be absolutely excepted from liability to an action for defamatory words published in the course of judicial proceedings.

So when Mr. Scarola pulls out my complaint, my client's original proceeding

and wants to parse through independent allegations or paragraphs and say, I'm going to prove that that statement is false and you should never pled it. That's not what the malicious prosecution law says. That's not what we are here to do.

We here for Your Honor to decide as a threshold matter whether the facts that my client reasonably relied on existed at the time he commenced the original proceeding.

And, in fact, that's the Liabos case that Your Honor discussed with us back on November 29th, where there's a mixed question of fact of law Your Honor has to do that threshold determination of if there's any question or dispute of those facts that my client relied on were not in existence. If the facts existed, then you have to determine, as the Court, whether my client had sufficient probable cause.

So what are the facts that my client relied on? They are not the flight logs. He's not relying on those flight logs. That's a complete red herring for the Court.

I see why it's a focus, though, because

Mr. Scarola wants to try other cases. This is not a sexual abuse case. It is not a federal court action a Crime Victims' Rights action. It's not even a defamation case, which Your Honor clearly stated this morning when denying the affirmative defense is related to defamation.

So to allow flight logs into this malicious prosecution case is completely irrelevant to the issue of whether the facts that my client relied on when he filed the original proceeding were in existence at the time that he filed it. The facts are that there was a civil action forfeiture proceeding against Rothstein filed with the U.S. Attorney's Office, that the Rothstein's firm was dissolving, that Mr. Edwards held himself out as a partner in that firm, that Mr. Edwards had the three lawsuits -- which he even concedes in his most recent deposition -- were used by Mr. Rothstein to fabricate -- and that's the word that Mr. Edwards testified to under oath -- to fabricate -- and create a fantasy -- that was another word Mr. Edwards used.

Those facts, did they exist? It sounds like we're in agreement. Those facts existed.

The razorback lawsuit brought by Mr. Bill Scherer down in Fort Lauderdale who was quoted in a newspaper article my client read and relied that said Mr. Rothstein was tricking investors. He used Epstein's cases as a showpiece and bait. Which Epstein cases? The one that Edwards had.

So the flight logs are irrelevant. They are far astray from what we are here to try. And they are an attempt to open up some other lawsuit, sexual --

By the way, the three clients of Mr. Edwards, Mr. Edwards concedes were not -- you never heard Mr. Scarola deny that -- because Mr. Edwards conceded, they are not on my client's planes.

So this, like many of the other exhibits, Your Honor must be precluded, because they are wholly irrelevant. And if there was any remote probative value, they are prejudicial to talk about flight logs and celebrities who may have been on my

client's planes.

THE COURT: I think that the issue itself, meaning the tangential allegations that were made that mentioned flight logs or mentioned the good faith discovery aspects of Mr. Edwards' plight relating to his three clients has some relevancy.

However, the flight logs themselves would be subject to -- and the Court is sustaining at this juncture the relevancy objection, and also a 403 objection. And that is, that while mentioning the fact that Mr. Edwards in good faith -- whatever the case may have been -- sought these flight logs as part of his discovery process representing the three young women, at the same time the Court has expressly indicated its significant reservations. And in fact, it's condemnation of trying either those cases in this courtroom -- as far as the malicious prosecution case is concerned -- or more importantly that we are going to potentially constructively try other either underaged or over the age of consent -- albeit potential sexual assault claims -- in

this forum.

So again, while it may become relevant as to why Mr. Edwards went about his business in seeking out those flight logs in a matter of good faith discovery, the flight logs themselves, in this Court's respectful view based upon its ruling, are irrelevant. And if there's any probative value at all, they would be materially outweighed by the prejudice of 403.

MR. SCAROLA: May I raise a question, Your Honor?

THE COURT: Briefly.

MR. SCAROLA: Thank you.

Do I understand the Court's ruling to be that Mr. Edwards is going to be able to explain why he was seeking the discovery he was seeking, why he was seeking the flight logs, the fact that he did obtain flight logs that confirmed independent information about children being transported on the airplane.

THE COURT: The latter is the one that will have to be discussed further, again, as I pointed out earlier, when the context

comes up an it's introduced or attempted to be introduced outside the presence of the jury.

To the, what I perceive to be three questions, the two former questions, the answer would be yes.

MR. SCAROLA: Will the Court take judicial notice of Florida Statute 90.404 (2), which is commonly referred to as the Williams Rule, and federal rule 415(g), which expressly permits the introduction of evidence with regard to other sexual assaults against children, so that the jury is away of the fact that Mr. Edwards, not only had a good faith basis to conduct this discovery, but quite arguably would have been grossly negligent to have failed to pursue it?

THE COURT: The only thing I would say to that, Mr. Scarola, is I don't want to mix apples and oranges. And that is, I don't want to place the Court's incriminator on getting too far afield and turning this into a case about alleged sexual exploitation, particularly of others outside of

Mr. Edwards' representation. That would serve only to inflame the jury, and, again, would cause the playing field to become unleveled, because the defense to the malicious prosecution claim, i.e., Epstein and his attorneys, would have to be fighting claims that they may not even know about much, much less the ones that they do.

So again, I want to center on those three claims that were brought by Mr. Edwards on behalf of his clients, and center on those aspects that would be relevant to the malicious prosecution claim and the alleged ginning up of those claims, the alleged attempt to align himself with Rothstein, the alleged attempt to factor these cases, potentially Mr. Edwards' conduct as it related to those factoring matters.

MR. SCAROLA: I am -- I am sorry. I didn't mean to interrupt.

THE COURT: What I'm trying to say is things like flight logs, the danger of unfair prejudice. And also, in -- to answer your question regarding the cases that talk

about the prior similar acts or perhaps even subsequent similar acts, those cases are from the forum of which the actual criminal claim, or perhaps even a civil claim that stems from the alleged assault, is being heard.

Again, what I'm trying to emphasize is that I do not want to introduce tangential matters into this case which would either directly or indirectly, whether purposefully or not, inflame this jury.

So that is the ruling of the Court.

I want to move forward now on the next issue that's being objected to, that is what is generically listed as Jeffrey Epstein's phone records.

MS. ROCKENBACH: May I approach, Your Honor. And I can swap with the court Exhibits 10 and 9, the phone records that were produced to my office by Mr. Scarola.

Your Honor, the objection is identical to the last, and that they are not relevant. My client's phone records, if there was any remote relevance as to who my client may have called on any given day, I don't think

that's going to be -- I think it's prejudicial. I think there's a danger of prejudicing this jury.

I am not quite sure what relevance Mr. Scarola thinks that phone records have to the malicious prosecution action, unless they think we may hear that there is going to be some attempt to prove the falsity of some individual allegation in te original proceeding, which is not what we should be doing here in this action.

THE COURT: Thank you.

MR. SCAROLA: I am -- I continue to be extremely puzzled by that statement, that we are not here to prove the falsity of claims in the original complaint.

I would like some guidance from the Court.

THE COURT: No need to puzzled. I think I've already made myself abundantly clear. And that is, that the relationship between the legitimacy of the three claims: [redacted]., E.W. and Jane Doe, are going to be permitted in a manner that befits the dignity of the courtroom, without pejorative

commentary as to Mr. Epstein, nor, obviously, as to the three plaintiffs at issue.

And as conceded by Epstein in his papers, once Mr. Mr. Link and Ms. Rockenbach became involved to the matter, and that is there's no conceivable way that those issues can be ignored, because of the nature of Mr. Epstein's announced defense as well as his deposition testimony to the extent that he testified. And that is, that these three cases were a part of some type of an elaborate scheme by Rothstein and others, including the litigation team -- which is defined as including Edwards -- to somehow inflate, gin up, overexaggerate, whatever the case may be, the value of those cases to these investors, whatever damage was caused to Epstein as a result thereof.

So that's the clear unadulterated ruling of the Court as to that issue.

MR. SCAROLA: And I understand that, sir. My question to you is, if there is a specific allegation in the complaint --

THE COURT: That was brought by

Mr. Epstein.

MR. SCAROLA: -- that was brought by Mr. Epstein against Mr. Edwards, does Your Honor's ruling contemplate that we get to prove that allegation is false? Without getting into what exhibit we are going to use to prove its false, is there any issue about the fact that if he alleged it in the complaint and it's false, we get to prove it's false?

THE COURT: There's no issue as far as I am concerned.

MR. SCAROLA: Thank you, sir. I think that helps a great deal, because I have been hearing something entirely different, repeatedly from the other side. I didn't understand how they can possibly be making that argument that we weren't permitted to prove the falsity of every false allegation in the complaint.

THE COURT: My intent is to hold Mr. Epstein accountable -- as I try to do each and every day, no matter whether it litigant or attorney -- and that is, what they write they are going to have to stand

behind. And I have got no issues in that respect at all.

MR. SCAROLA: Thank you, sir. That's very helpful. I appreciate that clarification.

THE COURT: Now, again, the mere fact that Mr. Epstein mentions flight logs in his complaint does not ipso facto make the entire flight log disclosure relevant to the jury's consideration of the claims.

So I want to temper my broad statement by that example as it may constitute examples in other matters that he's claimed.

But generally, globally, yes. The accountability issue is still resonating with the Court, and will always resonate for as long as I am doing this.

MR. SCAROLA: Thank you, sir. I do appreciate that clarification. I'm sorry to the extent that any of that may seem to be argument after Your Honor has ruled. That helps me a great deal.

THE COURT: Let's move on.

MR. LINK: Your Honor, may I comment on that very, very briefly.

THE COURT: Sure. Yes, sir.

MR. LINK: We have heard the Court ruled that way and we've accepted that ruling. We don't agree that that's what the law suggests, but that's the playing field that you have set for us.

THE COURT: The playing field being -- and then you don't agree is exactly what, so that we can maybe clarify whatever your agreement is so that neither of us or any of us are working under any false pretenses.

MR. LINK: Your Honor, we don't believe that truth or falsity of any specific allegation has anything to do with malicious prosecution. It has everything to do with defamation. Here is why.

We believe that malicious prosecution focuses on the information that you make the decision to go forward with the lawsuit. Did you have enough information that a reasonable person would bring this civil proceedings. That's what the case law says.

THE COURT: How else is that testing, Mr. Link, but for the actual allegations that were brought?

Someone could be conjuring up any thought process that they may have to possibly bring a claim. But it's not until that black and white document is served on someone and a filing fee is paid, and the litigation commences -- and as contemplated by the jury instructions and by the law -- continued by the defendant in a malicious prosecution claim, the original plaintiff, to make this at all real.

MR. LINK: I think I can answer that question very easily, and here is why -- and you raise a really good point.

You, Mr. Scarola absolutely gets to test this. So here is when is Epstein's complaint is file, December 7th, 2009. I am suggesting to you that if you read the Supreme Court case that just came out, it will tell you what happens afterwards is all subject to the litigation privilege.

THE COURT: Which Supreme Court case you are talking about?

MS. ROCKENBACH: Debrincat.

MR. LINK: It's the first thing it says --

MS. ROCKENBACH: Under headnote one.

MR. LINK: -- that everything that happens after 12/7/09 is protected, it's subject to privilege. What the allegations are, the truth or falsity, any statements made by the lawyers, any statements made by the parties or witnesses.

THE COURT: Hold on just a moment. What about, though, extra judicial statements? The Debrincat case, the Wolfe case, for case that we had, was confined to issues dealing with the litigation itself.

The concern that Wolfe had was primarily one of chilling effect on the ability of, in that case, a rather well-known law firm in Miami and their ability to properly litigate their case without feeling -- feeling feathered by that.

What transpires outside of the litigation are you suggesting to me would not be relevant, meaning publication, things of that nature, things that this expert is going to say in terms of damages caused to Edwards as a result of this filing and it's

continuation.

MR. LINK: We are on two different points then.

THE COURT: Sorry. I may have misunderstood.

MR. LINK: You got it, but you are on two different points, so let me tell you this.

The extra judicial statements -- and it's a great example. Epstein sues for abuse of process, RICO, whatever he sues for. Outside of the courtroom Mr. Epstein stands up and says to a reporter, Mr. Edwards is a thief. There's no part of that statement that's connected to the litigation. He doesn't have immunity.

He makes a statement about the litigation, and he says, I have alleged Edwards was connected to Rothstein's Ponzi scheme. He says it outside of the courtroom. Is that connected to the litigation? Yes, it is.

So I don't think the law is unclear at all. And I don't think Mr. Scarola would dispute it if you asked him does the

litigation privilege protect everything that happens in a lawsuit through parties, witnesses, lawyers and Judges that are connected to the litigation. He would say, in any other circumstance -- he said it in this room -- he said it in this courtroom two or three times -- all of that is protected by the litigation privilege.

MR. SCAROLA: No. There is one exception. And the one exception is continuing to maintain the lawsuit in the absence of probable cause. That's one exemption. Everything else is protected by the litigation privilege. The one thing that is not, the one exemption carved out of the litigation privilege by every court, up until the Third DCA decided otherwise, and the Fourth DCA issued its opinion, every other court in the nation has said you cannot maintain a lawsuit in the absence of probable cause. You can't file it in the absence of probable cause.

THE COURT: You're bringing back bad memories. If I heard that once, I heard it a thousand times. I think that's why Judge

Warner went out of our -- very kind way -- I am saying that with an abundant amount of respect. I think she's an exceptional appellate judge -- she stated that the trial court correctly followed the Wolfe decision.

Off the record.

(A discussion was held off the record.)

THE COURT: I do need a break. I hate to break you in the middle of a thought, but I do have some lunch plans. I want to make sure that I respect those. It's about five or so after noon. Let's get back, please, assembled at 1:20.

What my plan is, I'm going to give you another two hours this afternoon. So we will go whenever we start and two hours thereafter.

What I would like to do is try to get through as much of this as we can.

My continued suggestion is to work with each other, if you can, as far as any of these exhibits may be concerned. And then what I will do is -- if you are prepared to do it -- is get into the motion to stay if we have time to do that today, okay?

MR. GOLDBERGER: Judge, I apologize. So I'm kind of responsible for the stay motion, and I'm juggling a couple of balls right now. I'm not going to be here this afternoon. I got called up for trial. I have to go prepare for that.

On a personal level, my son and daughter-in-law their due date is today. I think it's happening so --

THE COURT: If you would have told me that, I would have been able to hear it before we did this evidence issue, because I think I mentioned earlier that I was prepare to do this today.

You know, my suggestion is probably that either Mr. Link or Ms. Rockenbach could argue it in your absence.

I will be glad to take it up the first thing this afternoon, Jack, if it will help you. But, you know --

MR. GOLDBERGER: I apologize for not telling you ahead of time.

THE COURT: I understand. You have a lot on your mind and I respect that. But at the same time, I told the parties before,

you know, I am slammed, and I have to get this stuff pushed through in the best way I can describe it. So I'm going to have to insist that you make yourself available.

I will willing to do it, as I said, first thing out of the gate. I don't expect it to take very long. I'm expecting it to be about a 15-minute argument per side. And I will get you out of here, to te best of my ability, by 2:00 in the afternoon, as long as there's no unforeseen circumstance.

MR. GOLDBERGER: Let me talk to co-Counsel.

MR. SCAROLA: I can do my argument in five minutes on that issue.

THE COURT: I don't think it's going to take more than 15 minutes to present, then five on the rebuttal. So I'm telling you right now, we can' get it done in less than half an hour. I will be glad to that. I will give every you every accommodation, as I would with any of you here. I would do the same thing.

But I need to respect the fact that I've put aside this time, and that I've

prepared in accordance with the information that I received from counsel yesterday in the manner which puts that as the next -- as the next viable thing to review and -- I haven't gone through the supplement motions to compel yet. That is what I was planning to do on Thursday.

I'm sorry about that. Again, it is with all due respect to your long experience and the fact I think you're an excellent lawyer and a great person, so it's not personal at all, it's just needing to get this done.

Thank you. And thank you all for understanding. I appreciate that. See you back assembled at 1:20.

(A recess was had 12:09 [redacted]. -