

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

JEFFREY EPSTEIN,	)
	)
	)
Petitioner/Counter-Defendant,	)
	)
vs.	No. 50-2009CA040800XXXXMBAG
	)
SCOTT ROTHSTEIN, individually,	)
and BRADLEY J. EDWARDS,	)
individually,	)
	)
	)
Defendants/Counter-Plaintiff.	)
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West Palm Beach, Florida

November 2nd, 2018

10:25 a.m. - 1:06 p.m.

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 Plaintiff/Counter-Defendant Epstein's Motion to  
 Allow Amendment to Exhibit List, et al.

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The above-styled cause came on for hearing before the Honorable Donald W. Hafele, Presiding Judge, at the Palm Beach County Courthouse, West Palm Beach, Palm Beach County, Florida, on the 2nd day of November, 2018.

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APPEARANCES:

For The Plaintiff/Counter-Defendant:

LINK & ROCKENBACH, PA  
1555 Palm Beach Lakes Boulevard, Suite 930  
West Palm Beach, Florida 33401  
By SCOTT J. LINK, ESQUIRE  
and KARA BERARD ROCKENBACH, ESQUIRE

For The Defendant/Counter-Plaintiff:

SEARCY DENNEY SCAROLA BARNHART & SHIPLEY,  
P.A.  
2139 Palm Beach Lakes Blvd.  
West Palm Beach, Florida 33409  
By JOHN "JACK" SCAROLA, ESQUIRE  
and DAVID P. VITALE, JR., ESQUIRE

1 THEREUPON, the following proceedings were had.

2 THE COURT: Good morning, everyone.

3 MR. LINK: Good morning, Your Honor.

4 MS. ROCKENBACH: Good morning, Your Honor.

5 MR. SCAROLA: Good morning.

6 THE COURT: Thank you for appearing on  
7 relatively short notice and trying to narrow  
8 some of the issues that we are dealing with as  
9 we prepare for December 4th.

10 I trust that both sides received the  
11 notice that I sent out regarding this media  
12 company that seeks to film the trial. Just as  
13 a precursor to any objections that are going to  
14 be filed, if any, I have had this situation --

15 MR. SCAROLA: Can we be seated, sir? I'm  
16 sorry.

17 THE COURT: Sure. I apologize.

18 MR. SCAROLA: No, no, quite all right.  
19 I'm getting old.

20 THE COURT: Yeah, that's okay.

21 MR. SCAROLA: Older.

22 THE COURT: What I was going to say is  
23 that I had this come up one other time, not  
24 with this company but with a company that  
25 typically requests this, and I believe

1 requested it for the prior trial.

2 And in that other matter, it was a medical  
3 malpractice case where both attorneys or each  
4 side came to me and said that they had been  
5 receiving competing emails from this company,  
6 essentially threatening them that if they  
7 didn't order their products then the other side  
8 would, and the other side would have a  
9 significant advantage at trial under those  
10 circumstances.

11 So both sides -- and it was a sensitive  
12 issue regarding a child that was the subject of  
13 the alleged malpractice, and both the doctor  
14 and the child's family did not want the case  
15 videotaped. But, I was running up against  
16 them, that being the media company, not having  
17 an attorney, both sides not wanting it, finding  
18 and seeing those competing emails that they  
19 said were completely and entirely untrue, that  
20 being the lawyers, who were very reputable  
21 counsel on both sides.

22 And so I made an initial ruling that  
23 because both sides believed that they were not  
24 being told the absolute truth, and because this  
25 company was not a true media outlet but, in

1 fact, was a for-profit trial service company, I  
2 made an initial ruling that I wasn't going to  
3 allow it to happen.

4 Well, that ended up in a front-page  
5 article about the -- that I had set up some  
6 type of a -- it escapes me now -- some type of  
7 a confrontation where the first amendment was  
8 being implicated, and people who I didn't know  
9 were weighing in on my attempt to silence the  
10 media, and all the rest of the stuff.

11 So the media company then, I believe,  
12 retained counsel and came in and said, okay, we  
13 want to do it, and because the Florida rule  
14 requires or states that one camera and one  
15 camera operator minimal is to be permitted, I  
16 did permit it. The "PS" of that story, which  
17 was never reported, was three days after the  
18 commencement of the five-week trial, they left.

19 Why? Well, you can draw your own  
20 conclusions. Mine, I believe is a  
21 well-reasoned hypothesis, and that is nobody  
22 ordered their stuff. So since then, whenever I  
23 have this request, I require the company, if  
24 it's going to be done, to pledge to the Court  
25 in writing that they will remain for the entire

1 duration of the trial. And if they don't, then  
2 they have essentially availed themselves of  
3 being sanctioned for fraudulent representation  
4 to the Court, because they become a part of the  
5 process by rule.

6 The bottom line is there has to be, as I  
7 understand it, at least one camera and one  
8 camera operator at the court -- or in the  
9 courtroom, by rule. It doesn't say which  
10 camera operator or which camera or whose camera  
11 operator or whose camera, but my understanding  
12 is that the rule requires that, if there is a  
13 request by the media.

14 Now, again, how that's defined, it just  
15 came to me as I was walking out to bring it to  
16 your attention and to advise you of my  
17 experience in those types of situations. And  
18 this company, I believe, is part of the email  
19 says that they were going to do this if they  
20 were permitted, gavel to gavel, so to speak;  
21 from the beginning to the end of the trial.

22 They may have known of my other concern  
23 because Ms. Oats, O-A-T-S, is in charge of  
24 these requests from court administration. So  
25 again, because I thought of it as we were

1 walking out, I wanted to make you aware of it.

2 And, again, I think I put a deadline in  
3 the notice to file any objections you may have,  
4 and to set it for an 8:45 if there are any  
5 objections within the time frame set forth, but  
6 we don't need any further discussion on that.  
7 I just wanted to share with you, though, some  
8 of the things that we deal with.

9 I believe it's a rule of judicial  
10 administration that I'm speaking about. I  
11 could find it, if necessary, but I believe that  
12 we don't need to go further on that.

13 Okay. So we're here today to discuss the  
14 proposed additional exhibits. The witness that  
15 was the potential cause of concern has been  
16 withdrawn for the purposes of the action by  
17 Mr. Edwards against Mr. Epstein, so that is  
18 moot at this juncture. And we'll launch into  
19 the discussion relative to the proposed  
20 exhibits.

21 I don't know if -- I know Mr. Scarola was  
22 busy this morning and likely trying to prepare  
23 for whatever hearing he had in front of another  
24 judge today, so I don't know how much you've  
25 had a chance to discuss this and whether or not

1           there has been any common ground that's been  
2           reached as it concerns, one, the procedure that  
3           we're going to utilize in terms of this  
4           particular exercise or, two, the threshold  
5           issue of whether or not any additional exhibits  
6           are going to be permitted at all.

7           So, Mr. Link, as the movant, I will let  
8           you speak first, then Mr. Scarola, I'll follow  
9           up with you.

10           MR. SCAROLA: Your Honor, if I might,  
11           there are a few of these exhibits that we are  
12           not objecting to, and it may be helpful if I  
13           identify those. And when I say "we are not  
14           objecting," we are not objecting on the basis  
15           that these are late-listed exhibits.

16           THE COURT: I understand.

17           MR. SCAROLA: There may very well be  
18           evidentiary objections that we have, but on the  
19           submission to the Court --

20           THE COURT: Okay. Let me get to it  
21           because, again, in viewing it last night, I  
22           should have tabbed it, but I didn't. But I  
23           think I have it.

24           MR. LINK: Your Honor, I have a tabbed  
25           version, if that helps you.

1 THE COURT: I've got it right in front of  
2 me. But thank you very much. It may have, if  
3 I wasn't able to find it as quickly as I  
4 luckily was. Okay.

5 MR. SCAROLA: This is Epstein's supplement  
6 to motion to allow amendment to exhibit list.

7 THE COURT: I have it.

8 MR. SCAROLA: And on page 2 of the  
9 attachment, the amended exhibit list, at the  
10 bottom there are two items in blue.

11 THE COURT: I'm with you; 26 and 27, for  
12 the record.

13 MR. SCAROLA: That's correct, 26 and 27,  
14 for the record.

15 And those were documents that were  
16 obtained by the defense subsequent to the due  
17 date for the exhibit list, and we do not object  
18 on the basis of late disclosure to those two  
19 items.

20 THE COURT: Remind me who [REDACTED]  
21 [REDACTED] is?

22 MR. SCAROLA: Yes. [REDACTED], Your  
23 Honor, is one of Mr. Epstein's victims. She  
24 has had a prominent public role with respect to  
25 accusations against Mr. Epstein, and is the

1 victim of Mr. Epstein, who has alleged that she  
2 was transported to various locations around the  
3 country and outside the country, and that she  
4 was prostituted to third parties by  
5 Mr. Epstein.

6 So there are allegations against a number  
7 of prominent individuals that were made by  
8 Ms. [REDACTED] that formed the basis for the  
9 issuance of subpoenas or the discussion about  
10 the issuance of subpoenas by Mr. Edwards that  
11 Mr. Epstein alleged had no basis in good faith  
12 and were intended solely to "gin up the claims  
13 against Mr. Epstein."

14 THE COURT: Is she now a resident of  
15 [REDACTED]

16 MR. SCAROLA: [REDACTED]

17 THE COURT: Okay. That helped to refresh  
18 my recollection.

19 MR. LINK: And Your Honor may recall that,  
20 at least as of the last time we visited this  
21 issue, Your Honor had indicated that you were  
22 going to let Mr. Edwards talk about his three  
23 clients, and none of the others unless they  
24 made a connection, and she fit within that  
25 category. We listed this for a different

1 purpose. But I know we're not doing the  
2 evidence today.

3 THE COURT: Right. Okay. All I'm getting  
4 to is 26 and 27 is not being objected to based  
5 upon late filing.

6 What about 28?

7 MR. SCAROLA: Same with regard to 28, Your  
8 Honor.

9 THE COURT: And 29?

10 MR. SCAROLA: 29 appears to be some form  
11 of argument. And I haven't seen this  
12 comparison, but I assume --

13 MR. LINK: Your Honor, we withdrew it from  
14 our exhibit list that we filed, I think it was  
15 last week.

16 THE COURT: Okay. So that's been  
17 withdrawn.

18 MR. SCAROLA: Okay. All right.

19 THE COURT: So we can put a mark there.  
20 Thank you.

21 MR. LINK: We're looking at the exhibit  
22 list, Your Honor, that we submitted back in  
23 March or April. I think it was March. We have  
24 removed items from this list.

25 THE COURT: Okay. Well, I'm looking at

1 this, this is May 2nd filing.

2 MR. LINK: Yes, sir, that -- we actually  
3 pared that down even further.

4 THE COURT: Okay. Do you have that with  
5 you?

6 MR. LINK: Yes, sir.

7 THE COURT: All right. Has Mr. Scarola,  
8 Mr. Vitale received a copy of that?

9 MR. LINK: Yes, sir. Yes. We filed that  
10 as part of our compliance with this Court's  
11 pretrial order, which then we discussed  
12 yesterday.

13 THE COURT: Okay. Mr. Scarola may still  
14 be working off the May 2 filing.

15 MR. SCAROLA: Yeah, that's the one that I  
16 was working off of.

17 MR. LINK: I'm sorry, 28 and 29 are the  
18 only two that we removed.

19 THE COURT: 28 and 29 are the only two you  
20 removed?

21 MR. LINK: Yes, sir.

22 THE COURT: Okay. That's fine. So 28's  
23 been withdrawn.

24 But, Mr. Scarola, are you going to seek  
25 its admission otherwise?

1           MR. SCAROLA:  If they are listing the,  
2           the --

3           THE COURT:  Numbers 26 and 27.

4           MR. SCAROLA:  If they're listing 26 and  
5           27, then we would probably want to use the  
6           transcript; yes, sir.

7           THE COURT:  All right.  So, what's your  
8           thoughts, Mr. Link?

9           MR. LINK:  I don't know how he can use an  
10          exhibit that we have withdrawn from the list.  
11          It's not on his exhibit list.

12          THE COURT:  I tend to agree.

13          MR. SCAROLA:  Well, the --

14          THE COURT:  And let me explain why, to  
15          give you a basis for my, at least, proposed  
16          ruling.  And that is we're here primarily today  
17          to discuss late-filed exhibits.  And if the  
18          counter-plaintiff, who I'll refer to the best  
19          that I can without confusing the names,  
20          Mr. Edwards, has not listed a given exhibit,  
21          then it's my inclination that what's good for  
22          the goose is good for the gander, and that is  
23          that I'm not going to simply allow an addition  
24          at now this even-later juncture.

25          And I will note for the record, again, as

1 we did yesterday, that because the parties were  
2 aware of the August order that was -- and I  
3 take responsibility -- erroneously sent out in  
4 its form, the announcement of the trial was  
5 appropriate, but the form of saying it was  
6 contrary to specific rules that I had entered  
7 earlier relative to the addition of any  
8 exhibits or witnesses, as well as any  
9 discovery.

10 And, again, that was agreed to by the  
11 parties, that they recognized that in August,  
12 but chose not to deal with that particular  
13 issue until later. So I'm not holding it  
14 against either party that it was not brought to  
15 my attention earlier.

16 But if we're dealing with late exhibits,  
17 again, I am inclined to accept a withdrawal and  
18 not accept a late -- at this point now, later  
19 filing or later announcement or listing of an  
20 exhibit by the other side.

21 Mr. Scarola?

22 MR. SCAROLA: I just want to be sure that  
23 Your Honor is focusing on what it is we are  
24 talking about here. The specific exhibits.

25 27 is a notice of filing the transcript of

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[REDACTED]

26 is that audio of the interview. And all that we're talking about with regard to 28 is a transcript of the audio that is attached to the notice that was filed. I don't know that that makes any difference to Your Honor --

THE COURT: I don't know -- yeah, what's the difference between -- now that I'm looking at it? I was just giving a global ruling as what I believed to be fair in terms of any late exhibits. But I don't know what the difference is between 27 and 28. Can somebody explain that to me from the Epstein side, please?

MR. LINK: Yes, sir. 28 was a transcript that we had the court reporter prepare for us because of some blanks that were in Mr. Scarola's that said inaudible, and we've withdrawn that exhibit, Your Honor.

THE COURT: No, 27 --

MR. LINK: I'm sorry. I thought you asked the difference in 27 and 28.

27 was prepared by Mr. Scarola's office.

THE COURT: Okay.

MR. LINK: 28, because there were portions

1 of the transcript that said "inaudible," we  
2 hired a court reporter to listen very  
3 carefully, and see if she could fill in those  
4 blanks. And so we're withdrawing ours as an  
5 exhibit, and Mr. Scarola, it's been on his  
6 exhibit list, I think a long time, they've  
7 submitted it to the Court.

8 MR. SCAROLA: I think it has been also,  
9 yes.

10 MR. LINK: So, that's the --

11 THE COURT: Okay. So is 28 simply an  
12 addition of what Mr. Scarola had on the exhibit  
13 list?

14 MR. LINK: It was a separate transcript  
15 prepared by a court reporter that we hired,  
16 because the transcript that Mr. Scarola  
17 submitted --

18 THE COURT: I now understood the  
19 distinction. What I'm trying to get to,  
20 though, is 28 part of what was already listed  
21 by Mr. Scarola in his exhibit list?

22 MR. LINK: Sort of, yes, because the court  
23 reporter was filling in blanks.

24 THE COURT: Okay. So I think that perhaps  
25 it's probably going to be helpful if there

1 are -- and if there is an official court  
2 reporter who has listened to that audiotape and  
3 is qualified to fill in those blanks as  
4 indicated. It would be perhaps a completeness  
5 issue that could be argued would make that a  
6 better transcript than an unofficial  
7 transcript.

8 MR. LINK: I think that would be true if  
9 we had not withdrawn it from the list, Your  
10 Honor. I don't know how an exhibit that we  
11 withdrew can be used for completeness by the  
12 plaintiff.

13 THE COURT: Okay. But maybe I'm still  
14 misunderstanding. I thought you said that that  
15 was listed --

16 MR. LINK: No, sir, 27 is listed on  
17 theirs, not 28.

18 THE COURT: All right.

19 MR. SCAROLA: All exhibits listed by the  
20 defendant are listed by the plaintiff.

21 THE COURT: Yeah, but that catchall is --

22 MR. LINK: Now we're going to catchalls,  
23 Judge.

24 THE COURT: Yeah. And the catchall was a  
25 primary focus of your motion to strike.

1           MR. LINK: I remember being verbally  
2 beaten by Mr. Scarola.

3           THE COURT: That's okay. As long as it  
4 was not listed as an exhibit prior and it's  
5 being withdrawn, as far as the Court is  
6 concerned, I am going to strike it and/or allow  
7 it to be withdrawn, and it will be withdrawn.

8           And so reliance will have to be made with  
9 respect to the original tape and the transcript  
10 that was provided by whomever it was that was  
11 provided.

12          MR. LINK: Essentially, Your Honor, we  
13 figured the tape is the best evidence, so that  
14 was our thing.

15          THE COURT: All right. I'll go along with  
16 that.

17          MR. LINK: Your Honor, I was going to  
18 do -- I'm going to do a presentation, but  
19 Exhibit 24 was listed because Mr. Berger, last  
20 time, was going to be having surgery during  
21 trial. If counsel represents he'll be here,  
22 neither one of us need his transcript. We can  
23 obviously use it as cross, but we don't need to  
24 make it an exhibit.

25          THE COURT: Do you expect him to testify

1 live?

2 MR. SCAROLA: I am told by Mr. Berger that  
3 he is unavailable the first week, but expects  
4 to be available the second week.

5 THE COURT: Okay. Then I'm going to take  
6 that as that he will testify live. We'll call  
7 him out of turn, if necessary, but the  
8 transcript itself as evidence will apparently  
9 not be necessary.

10 MR. LINK: Yeah, that was why I listed it,  
11 in case he was unavailable.

12 MR. SCAROLA: Your Honor, deposition  
13 transcripts don't get introduced into evidence  
14 anyway. They are published to the jury.

15 THE COURT: Let me -- they are published  
16 and there may be a filing if there's a  
17 necessity to have it filed, but...

18 MR. SCAROLA: Yes, Your Honor.

19 THE COURT: It's at least better to  
20 understand why it's listed, than not. If it  
21 was to caution against its unavailability  
22 potentially then that was filed.

23 All right, what's next to be addressed?

24 MR. LINK: Anything else, Mr. Scarola?

25 MR. SCAROLA: Those are the only ones that

1 we're prepared to stipulate to.

2 THE COURT: Any of these other yellow ones  
3 that need to be addressed, or... So what I'm  
4 understanding is, the rest need to be  
5 addressed. Those are the only ones that we had  
6 a relative stipulation?

7 MR. SCAROLA: Yes, sir.

8 THE COURT: All right.

9 MR. LINK: May it please the Court.

10 THE COURT: Okay. Go ahead.

11 MR. LINK: The Court's pleased? Always  
12 pleased to see us. Fair enough.

13 Your Honor, I just, as a point of  
14 clarification, Mr. Scarola handed us a document  
15 that discusses the 47 exhibits and it was my  
16 understanding that today we were going to be  
17 addressing my motion to add exhibits to my  
18 exhibit list, not the 47. Because the 47  
19 require an in camera inspection by this Court,  
20 as well as argument as to whether if there was  
21 a privilege, it was waived by crime-fraud  
22 exception, turning them over to somebody else,  
23 various other reasons.

24 So I'm here today to focus on my motion --

25 THE COURT: Right. All I'm --

1 MR. LINK: -- which is what this Court  
2 said yesterday we would focus on.

3 THE COURT: All I'm prepared to do today  
4 are these yellow or blue amendments to the  
5 exhibit list.

6 MR. LINK: Yes, sir.

7 THE COURT: Is that what you're talking  
8 about?

9 MR. LINK: Yes, sir. That's what you said  
10 yesterday, so I just wanted to make sure we  
11 were on the same page, because that's the  
12 motion --

13 THE COURT: That's what I'm doing today  
14 until the noon hour.

15 MR. LINK: Great. Thank you, Your Honor.

16 MR. SCAROLA: And there is a threshold  
17 Binger issue, which my presentation addresses  
18 that I provided to opposing counsel but have  
19 not yet given to Your Honor. I can give it to  
20 Your Honor now, if you'd like.

21 THE COURT: Sure. Thank you.

22 MR. SCAROLA: Thank you, sir.

23 THE COURT: All right.

24 MR. LINK: All right, are you ready, sir?

25 THE COURT: Yes, I am.

1           MR. LINK: Okay. Your Honor, I believe  
2 there are two reasons why our motion should be  
3 granted. One, I believe that our supplemental  
4 exhibit list is in compliance with this Court's  
5 order, and the order that I'm talking about,  
6 Your Honor -- just left me. Hang on. It was  
7 over here. There we go.

8           The order we're talking about is the  
9 July 20th, 2017 order. That's the order that  
10 set this case in December of last year, and  
11 Your Honor moved that trial to March based on  
12 our motion for a continuance when my law firm  
13 came in and based on -- Your Honor's actual  
14 ruling was that there were so many,  
15 essentially, pretrial motions that required  
16 days to get through that would either shorten  
17 or lengthen the trial.

18           And -- Your Honor, may I approach?

19           THE COURT: Sure.

20           MR. LINK: This is a copy of the order,  
21 and I believe that what we have done is in  
22 compliance with this Court's order.

23           The second basis -- and we're going to  
24 walk through the order. The second basis is  
25 that, as Mr. Scarola said, using a Binger

1 analysis, if we were not in compliance with the  
2 Court's order, these supplemental exhibits  
3 should be allowed because there is, in fact, no  
4 prejudice to the plaintiff in this case in  
5 letting them come in.

6 THE COURT: The actual line of the uniform  
7 order is "use of the exhibit or witness may be  
8 allowed by the Court for good cause shown or to  
9 prevent manifest injustice." And that is as it  
10 relates to any exhibits provided after the  
11 pretrial conference or the conference wherein  
12 the parties are to prepare a pretrial  
13 stipulation.

14 MR. LINK: Yes, sir.

15 THE COURT: And, essentially, after the --  
16 the witness lists have been, and exhibit lists  
17 have already been disclosed.

18 MR. LINK: That is correct, Your Honor.  
19 Except that your order in July 2017 allows the  
20 parties to amend certain provisions of it  
21 without the Court's permission. One of those  
22 provisions, which is in -- is on page 3 under  
23 paragraph G, is that the pretrial stipulation  
24 allows the parties to supplement.

25 And here, what happened is we -- I'd like

1 to walk the Court through the timeline to see.

2 You entered the order, the parties were  
3 complying with it. Okay? You've got exhibit  
4 lists, you've got witness lists coming in, and  
5 Mr. Scarola files a unilateral pretrial stip,  
6 and that unilateral pretrial stip is very  
7 important because it shows the difference, Your  
8 Honor, in what Mr. Scarola --

9 May I approach and hand the Court --

10 THE COURT: Sure.

11 MR. LINK: What Mr. Scarola intended was  
12 to follow this Court's order without exception,  
13 which would have meant that there could be no  
14 additional exhibits.

15 So Mr. Scarola's unilateral pretrial  
16 stipulation contains no language that allows  
17 the parties to supplement their exhibit list.  
18 The pretrial stipulation that Mr. Scarola and I  
19 negotiated --

20 May I approach again, Your Honor?

21 THE COURT: Thank you.

22 MR. LINK: -- you will see is very  
23 different. It changes that provision  
24 dramatically.

25 And if Your Honor will turn in to the

1 pretrial stip, which is at the beginning on  
2 page 12.

3 THE COURT: Okay.

4 MR. LINK: There's a material change to  
5 the unilateral pretrial stipulation. The  
6 parties agree --

7 THE COURT: Hold on just a moment.

8 MR. LINK: Yes, sir.

9 THE COURT: It's on exhibit lists,  
10 paragraph D?

11 MR. LINK: Yes, sir.

12 THE COURT: All right.

13 MR. LINK: So if you compare the language  
14 that we negotiated verse the language in the  
15 unilateral, you will see that the parties do  
16 not waive their right to amend their exhibit  
17 list. That's a substantial negotiated change  
18 between counsel for the parties.

19 Your Honor, I know we talked about this a  
20 few months ago, and you brought up Chief Judge  
21 Melanie May's opinion, and there's also, at the  
22 time, Chief Judge Cory Ciklin's opinion, where  
23 they both say that where the parties agree in a  
24 pretrial stipulation, that should be enforced.

25 It is the most important tool for getting

1 ready for trial. You can waive issues, you set  
2 the facts to be determined or not determined,  
3 and you can, as your court order permitted back  
4 in July, agree to deviate from the exhibit  
5 provisions of the standard pretrial order. And  
6 we did. And, in fact, we both did.

7 Mr. Edwards, after the date passed for  
8 exhibit lists, filed amended exhibit lists.  
9 And we didn't object, because that's what we  
10 agreed to. We filed amended exhibit lists.  
11 They filed a second amended exhibit list. So  
12 that the parties, consistent with their  
13 negotiated agreement in the pretrial stip,  
14 abided by it, both of us, Your Honor, and filed  
15 amended exhibit disclosure and witness lists  
16 pursuant to the pretrial stipulation.

17 Second, if you take a look in Tab A of the  
18 pretrial stipulation, you'll see there's  
19 Bradley Edwards' witness list, I'm sorry,  
20 exhibit list. If you look at page 15, you will  
21 see that Mr. Scarola included ten catchalls.

22 The next exhibit list is mine, that has, I  
23 think, nine catchalls. So both sides, in  
24 conjunction with our stipulated pretrial,  
25 amended exhibit lists, and we both included

1 catchalls.

2 And I know that one of Mr. Scarola's  
3 biggest complaints about our exhibit list was  
4 that, Oh, my goodness, Mr. Link had catchalls.  
5 We both did, Your Honor. Whether that makes it  
6 right, I'm not saying. But I'm telling you  
7 it's what the parties did consistent with what  
8 we negotiated.

9 If you look at, Your Honor, Tab B, which  
10 is our exhibit list with our nine catchalls,  
11 you'll see on page 22 another sentence  
12 incorporated in our exhibit list that says,  
13 "Plaintiff/Counter-Defendant reserves his right  
14 to supplement this exhibit list." Again,  
15 consistent with what we negotiated in the  
16 pretrial stipulation.

17 I don't believe that Your Honor has to go  
18 to the Binger analysis where the parties, by  
19 agreement, agree that you can supplement the  
20 exhibit list. There is --

21 THE COURT: Isn't this a little different  
22 than what you were telling me yesterday I  
23 should do? I have to employ the Binger  
24 analysis?

25 MR. LINK: You have to employ the Binger

1 analysis, Your Honor, I believe for the  
2 47 exhibits that we're going to get to at some  
3 point. Because, those exhibits, once you go  
4 through the in camera inspection, I think  
5 were -- they could fall within this exhibit  
6 list. And maybe you don't have to do Binger,  
7 it's possible. But I've always thought of  
8 those as different exhibits, frankly.

9 The exhibits that we're talking about now,  
10 if the Court finds that our pretrial  
11 stipulation does not govern our ability to  
12 amend exhibit lists, and we are then dealing  
13 with the issue of, okay, if we didn't comply  
14 with the Court's order, can we get them in  
15 anyway, that's a very simple Binger analysis,  
16 that, as this Court well knows, just requires  
17 you, mandates that you do the prejudice  
18 analysis.

19 I'm suggesting as the first basis, and I  
20 will now get to the second basis, that you need  
21 not conduct Binger based on the parties'  
22 agreement.

23 Now, in talking about Binger -- in talking  
24 about Binger, Your Honor, there are three  
25 categories of documents that are listed on our

1 exhibit list that this Court struck before the  
2 March hearing. And Your Honor's ruling was,  
3 essentially, we're starting trial on a Monday,  
4 there were -- I can tell you the numbers,  
5 because we reduced it greatly.

6 There were 360 different items, 700  
7 different items, we have reduced that greatly  
8 on our exhibit list. You've seen the ones,  
9 we've cut them out and gone right to the core.  
10 So in looking at the Binger analysis, there are  
11 three categories.

12 Category number one are emails that are  
13 from Brad Edwards and his team at the Rothstein  
14 firm, which they voluntarily produced, which  
15 are not the 47 on the privileged log, and which  
16 they can have no prejudice to because they were  
17 written or received by Mr. Edwards. There is  
18 no need to redepose Mr. Edwards by Mr. Scarola,  
19 because he never did depose him. I deposed  
20 him.

21 He has his clients, he can talk to his  
22 client about the emails. There is simply  
23 nothing that needs to be done as it relates to  
24 those emails.

25 So, for example, if Your Honor -- with

1 Your Honor's permission we have a book with all  
2 of these exhibits, and I'd just like to show  
3 you a few examples --

4 THE COURT: Okay.

5 MR. LINK: -- if I might.

6 May I approach, Judge?

7 THE COURT: Yes.

8 MR. LINK: Thank you, sir. I know I'm  
9 loading you with paper, but...

10 THE COURT: I really don't know what you  
11 think I'm going to be able to do with these  
12 thousands of documents that you're handing me  
13 now, but I'll do the best I can.

14 MR. LINK: Yes, sir. I'm going to take  
15 you to specific ones, so we can talk about  
16 them.

17 THE COURT: I'm just looking for something  
18 here.

19 MR. LINK: Is this okay to sit right here?  
20 Can you reach it, Judge?

21 THE COURT: Yes, thank you.

22 Okay. Go ahead.

23 MS. ROCKENBACH: May I approach, Your  
24 Honor, just to --

25 MR. LINK: Tab 211.

1 THE COURT: Okay. Thank you.

2 MR. LINK: So this is an example of one  
3 category of the exhibits that were listed. And  
4 this is an email --

5 THE COURT: What number is this?

6 MR. LINK: Tab 211.

7 THE COURT: I have that, but I'm talking  
8 about what numbered exhibit are we talking  
9 about corresponds --

10 MR. LINK: That's it, 211.

11 THE COURT: 211?

12 MR. LINK: Yes, sir.

13 THE COURT: Thank you. I'm sorry. I  
14 didn't realize that they correlated.

15 All right, thank you.

16 MR. LINK: Yes, sir. This is an email,  
17 and if you will start at the bottom, it's an  
18 email from Scott Rothstein to all staff telling  
19 them that he's available to come talk to. And  
20 you will see at the top there's an email from  
21 Mr. Edwards to Russell Adler where he says,  
22 "Mr. Edwards, do you want me to go talk to  
23 him," meaning Rothstein, "about our Epstein  
24 information today, or do you want to also be  
25 involved and set up some other time?" So one

1 of the issues in this case is Mr. Rothstein's  
2 involvement in the Epstein cases, that's one.

3 Two, under -- see, if I do this right, for  
4 my appellate lawyer -- 90.608, Mr. Edwards  
5 testified in his deposition, Your Honor, that  
6 he spoke to Mr. Rothstein, he believed, on two  
7 brief occasions, one in a restaurant in passing  
8 where Mr. Rothstein said "Go get them," and  
9 then he really had no -- Mr. Rothstein had no  
10 involvement in the case, and Mr. Edwards had no  
11 involvement with Mr. Rothstein.

12 This exhibit, among others, that we'll get  
13 to when we get to the 47, go to credibility of  
14 whether that testimony is true and what  
15 involvement Mr. Rothstein had.

16 The second category -- sorry, Your  
17 Honor -- let Your Honor finish reading. I was  
18 going a little quick.

19 THE COURT: No, that's fine.

20 MR. LINK: The second category of  
21 exhibits, if you turn to page 27 of the yellow  
22 and blue. These are in yellow, Your Honor.

23 THE COURT: Okay. I'm with you.

24 MR. LINK: This category has to do with  
25 public records of Mr. Edwards' three clients.

1           One of the issues now in this case, and I  
2           want to make sure the Court understands the  
3           timing, in November, the end of November, you  
4           might remember, we had two days of hearing  
5           where this Court made rulings that  
6           significantly changed how both sides were going  
7           to try the case. And one of the rulings that  
8           this Court made was that Mr. Edwards would be  
9           able to get on the stand and talk about his  
10          three clients and how strong their cases were.

11          The public information that we found, we  
12          started gathering after this hearing. We did  
13          not look for it before. After this Court's  
14          ruling, we did public record searches and found  
15          information about the three clients of  
16          Mr. Edwards, so that we would be prepared to  
17          cross-examine him when he gets on the stand and  
18          if he, in fact, says, [REDACTED]

19 [REDACTED]  
20 [REDACTED]  
21 [REDACTED]  
22 [REDACTED]  
23 [REDACTED]  
24 [REDACTED]  
25          MR. SCAROLA: Excuse me. May I request

1           that we try to deal with these issues one at a  
2           time? Just looking at the volume of materials,  
3           it's going to be very difficult for me, and I  
4           suggest probably for the Court, as well, to  
5           keep track of each of the arguments, and it  
6           would be better if we address them in the order  
7           in which they're made.

8           THE COURT: All right. Well, let me -- go  
9           ahead and finish this. There's only one email  
10          thus far that's been identified, I presume to  
11          be at issue here today in that chain, but...

12          MR. LINK: Yes. I was providing that  
13          simply --

14          THE COURT: You wanted to move on to this  
15          because --

16          MR. LINK: I want to cover the broad  
17          topics. I assume at some point, Your Honor,  
18          you may want to go through this book and look  
19          at it. I didn't think in an hour and a half we  
20          could cover every exhibit, so I want to give  
21          you my broad argument and some examples as part  
22          of my presentation.

23          THE COURT: All right.

24          MR. LINK: Okay? So if you turn to Tab 56  
25          in the big -- I'm sorry, in the big binder of

1 exhibits --

2 MR. VITALE: Which tab was that?

3 MR. LINK: 56.

4 THE COURT: All right. Yes, sir.

5 MR. LINK: You'll see this is an FBI  
6 investigation or recording of a statement from  
7 one of Mr. Edwards' clients. And one of the  
8 things that Mr. Edwards, I believe, is going to  
9 say -- I mean, honestly, Judge, I don't know  
10 what I'll use until he gets on the stand, for  
11 purposes of cross-examination. One of the  
12 things he said is that Mr. Epstein is  
13 responsible for -- these are strong cases  
14 because he's responsible for all their anxiety  
15 and troubles.

16 And if you look at the third paragraph,  
17 she tells the FBI in [REDACTED] life was  
18 not going well during the time she was  
19 providing Epstein with massages. She was  
20 buying and taking drugs: Xanax, Lorcets,  
21 Percocets. She stayed on pills, explained she  
22 wanted to feel numb, [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]

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There are multiple criminal records for all three of Mr. Edwards' clients. There are multiple criminal records, some of them have done time, some have been in drug rehab. One is an arrest record for one of Mr. Edwards' clients where



All of these exhibits, Your Honor, go to the strength that Mr. Edwards wants to get on the stand and tell the jury, that that's why there was not probable cause. These three clients of his cases were strong.

You will remember the sentence in the complaint that they focused on, and we had a long discussion about this, because our view is that you are not allowed in a malicious prosecution action to cherry-pick a sentence.

1           You have to look at the time the complaint was  
2           filed, what was known at that time. The  
3           litigation privilege covers every sentence in  
4           the complaint, otherwise, in every case we  
5           would be flyspecking allegations to find the  
6           one we couldn't prove to bring a malicious  
7           prosecution action.

8           But the ruling this Court made, based on  
9           this sentence that Mr. Scarola showed you,  
10          which was that the Rothstein and litigation  
11          team should have known that their three filed  
12          cases were weak and had minimal value. Your  
13          Honor ruled, at the end of November, that  
14          Mr. Edwards could get on the stand and explain  
15          that the cases were not weak, they were strong.

16          So this information that we have found and  
17          have asked to add to the exhibit list goes  
18          directly to the issue they injected into this  
19          litigation, and this Court said they could  
20          testify to, and because it's in the public  
21          records under Binger, it can't cause prejudice.

22          THE COURT: Well, how much is in the  
23          public record?

24          MR. LINK: A lot.

25          THE COURT: For example, this FBI

1 investigation, would -- I don't know if it's in  
2 the public record because of the redactions  
3 here, and...

4 MR. LINK: The arrest record --

5 THE COURT: For example --

6 MR. LINK: Yeah, the arrest records that  
7 I'm talking about, I'll show you are in the  
8 public record. And we can look at those.

9 If you turn to tab, for example, 446 in  
10 the big book...

11 THE COURT: Okay.

12 MR. LINK: And you look, flip through a  
13 few pages, a few of those exhibits.

14 MR. SCAROLA: I'm sorry, which tab,  
15 Counsel?

16 MR. LINK: 446.

17 MR. SCAROLA: Thank you.

18 MR. LINK: And you look at the next few  
19 exhibits.

20 THE COURT: These are photographs?

21 MR. LINK: Yes, sir. The photographs,  
22 they're on the Internet, of two of Mr. Edwards'  
23 clients.

24 THE COURT: Okay. The photographs of  
25 these young women in bikinis, T-shirts --

1 MR. LINK: Shirtless.

2 THE COURT: Well, shirtless, but with --

3 MR. LINK: With coverup, yes, sir.

4 THE COURT: -- something covering up their  
5 private areas. Okay.

6 MR. LINK: If you turn to Tab 462, you'll  
7 find the public arrest record that I was  
8 describing of one of Mr. Edwards' clients

9

10

11 THE COURT: I presume this is when this  
12 person was an adult.

13 MR. LINK: Well, this was in 1988, this  
14 one, in particular.

15 There are arrest records in here, and  
16 incident reports, from when some of

17

18

19

20 THE COURT: Okay. Well, let's --

21 MR. LINK: So this is the one --

22 THE COURT: Let's not skip around. And I  
23 understand that you're trying your best to use  
24 the time in an efficient manner, but as I said,  
25 I don't know who this -- well, I guess I do

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know, this is [REDACTED] it's given as the last name, [REDACTED]

MR. LINK: This is [REDACTED] for the way we refer to it. But you'll see her names as out in the public record.

THE COURT: All right. And it's -- [REDACTED] is the date of birth, the arrest --

MR. LINK: [REDACTED]

[REDACTED]

THE COURT: Okay. The date of birth is [REDACTED] and I thought I heard it was in [REDACTED] is when --

MR. LINK: I think your math is right.

[REDACTED]

MR. LINK: I believe your math is right.

THE COURT: Okay.

MR. LINK: And this is the paragraph I wanted to show the Court that I was describing

[REDACTED]

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5           So the public, the point of these exhibits  
6           in category two go right to this allegation and  
7           right to this Court's ruling on November 29th,  
8           that Mr. Edwards can get on the stand and talk  
9           about his three clients and why their cases for  
10          alleged sexual molestation were so strong.

11           So that's category two. And, Your Honor,  
12          I know we only have until noon. I will be glad  
13          to go through every exhibit, or Your Honor can  
14          take the book and go through every exhibit.  
15          And you're right, I'm trying to get as much  
16          information before the Court as I can.

17           The third, the third category of  
18          documents -- and, Your Honor, you'll see there  
19          are dozens, by the way, of the incident, police  
20          reports, going all the way back to when they  
21          were juveniles.

22           The third category of documents relate to  
23          Mr. Edwards' claim for damages. Mr. Edwards  
24          has made a claim that as a result of his being  
25          named in the lawsuit, Epstein versus Rothstein,

1           that he has suffered emotional distress,  
2           anxiety, every single day of his life since the  
3           day it happened. I took his deposition, he  
4           said every day, every day I have this  
5           incredible anxiety and stress and emotional  
6           distraught...

7           THE COURT: Because Epstein brought --

8           MR. LINK: Because Epstein brought this  
9           claim in 2009. '8. '9.

10          MS. ROCKENBACH: '9.

11          MR. LINK: '9, thank you. 2009.

12          So I took his deposition, as this Court  
13          allowed, at the end of 2017, eight years later.  
14          And he testified every single day since 2009  
15          when he was named in the suit, he has been  
16          suffering this traumatic anxiety, emotional  
17          distress, et cetera.

18          So, we have exhibits in here that show how  
19          successful Mr. Edwards has been as a result of  
20          the Epstein cases. His jury verdicts, he  
21          admitted that he made substantially more in  
22          income after being sued by Epstein than before.  
23          He publicizes, teaches, holds seminars based on  
24          the Epstein case.

25          THE COURT: Are any of these yellowed in

1 your list?

2 MR. LINK: Yes, sir, they are.

3 THE COURT: Tell me what pages you're  
4 speaking about?

5 MR. LINK: Yes, sir. They are at the  
6 beginning, and they are the page -- one second;  
7 367 and 368, it's on page 22.

8 THE COURT: Okay.

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

11 THE COURT: Sure.

12 MR. SCAROLA: I understand that we have  
13 until noon today, is that correct?

14 THE COURT: Right.

15 MR. SCAROLA: And we started at  
16 approximately 10:15. Mr. Link has been going  
17 for an hour, that would mean I have 45 minutes.

18 THE COURT: All right. I'll give you an  
19 hour, whatever time he takes. I can adjust my  
20 lunch hour.

21 MR. SCAROLA: Thank you, sir. I just  
22 thought it would be helpful to set some  
23 parameters.

24 THE COURT: There's never been a time,  
25 that I am aware, that I have ever given less

1 time to one side than I did the other.

2 MR. SCAROLA: I certainly understand, and  
3 that's in conformity with my recollection.

4 Thank you.

5 MR. LINK: Thank you, Your Honor.

6 THE COURT: 367 and 368. I did -- and  
7 those are just identified as Edwards --

8 MR. LINK: These are from -- they're from  
9 their website, you know, where lawyers are  
10 touting their success and what they do.

11 THE COURT: Right. Edwards Pottinger  
12 website printout Brad Edwards, Edwards  
13 Pottinger website printout reaching jury  
14 verdict.

15 MR. LINK: Yes, sir. So, when you look at  
16 Binger, I've explained the relevance to the  
17 case. When you look at Binger, it's hard to  
18 imagine there could be a prejudice using  
19 material that they published on their website.

20 So it's the last group that I would like  
21 to point out to the Court, and then I will wrap  
22 it up.

23 THE COURT: What we haven't covered is 332  
24 to 337, 315, 292 and 293. 282, 275, 254, 230  
25 and 231. 205, 210, 211.

1 MR. LINK: Right.

2 THE COURT: 177 and 178. 129 and 132.  
3 103, and several others before that.

4 MR. LINK: Yes, sir. If you look, Your  
5 Honor, at page 18 --

6 THE COURT: I am there.

7 MR. LINK: -- 332 through 337, these are  
8 exhibits. If you turn, for example, to 335 in  
9 the big book, these are exhibits of security  
10 guards that Mr. Epstein hired during the  
11 pendency of the litigation because of a concern  
12 he had that he was being followed or watched.

13 And as it turns out, you'll see at 335,  
14 that the Rothstein firm -- I'm sorry, this is  
15 in March of 2010, that the Farmer, Jaffe,  
16 Edwards firm hired investigators to go to his  
17 house and they were able to identify Richard  
18 Fandrey and Michael Fisten.

19 Michael Fisten was an investigator at the  
20 Rothstein firm that went with Mr. Edwards to  
21 the Farmer Jaffe firm. It says Mr. Fandrey's  
22 related to the Gambino family, former bodyguard  
23 of Scott Rothstein.

24 There are multiple incident reports and  
25 complaints to the Palm Beach police about the

1           investigative tactics that were going on. And  
2           one of, obviously, the issues in the case is  
3           going to be about how Mr. Edwards was  
4           prosecuting the case and what he was doing.

5           Again, this isn't going to be anything  
6           that could be prejudicial to Mr. Edwards  
7           because they're the ones who used their  
8           investigators to do the work.

9           In summary, Your Honor, and I know I  
10          haven't covered every exhibit, because it would  
11          take too long. And I don't want to use the  
12          entire time. But I do want to share this with  
13          the Court, so that you're aware as you consider  
14          this issue.

15          Beginning in February, in February of  
16          2018, as we were discovering this information  
17          and these documents, we began a rolling  
18          production. We did not wait. So one of the  
19          things in Binger that's important is  
20          gamesmanship. There was no gamesmanship. We  
21          weren't gathering documents and waiting until  
22          the week before trial to say, Here are the  
23          exhibits, and holding them back.

24          You will see that we made a rolling  
25          production on February 2nd. February 2nd we

1 produced 360 items with the production.

2 February 16th, Your Honor, we made a  
3 second rolling production, and we produced ten  
4 items with that production.

5 On March 2nd, we made another rolling  
6 production.

7 So we were producing information and  
8 documents to Mr. Edwards' lawyers during the  
9 process and during the time that we were  
10 finding them. We did not sit on them, we did  
11 not hold them back, we did not engage in  
12 gamesmanship. We did not take exhibits and  
13 documents we intended to use and had it in our  
14 files, sit back and wait.

15 This Court knows that's not the way  
16 Ms. Rockenbach and I practice, it's not the way  
17 we did it here. And we made sure that we  
18 produced, on a rolling basis, the documents, so  
19 as not to have them hit their desk two days  
20 before trial.

21 I believe, Your Honor, that we are in  
22 compliance with the Court's order pursuant to  
23 the pretrial stipulation that allowed both  
24 counsel, and both counsel took advantage of it,  
25 to amend their exhibit list. Mr. Scarola did

1           it twice, we did it, as well.

2           Secondly, if the -- this Court finds that  
3           we were not in compliance with the July 2017  
4           order, then all of these exhibits should be  
5           permitted to be added to the exhibit list  
6           because there can be no Binger prejudice. And  
7           if there's any Binger prejudice and they need  
8           additional time, there's -- they've had these  
9           exhibits and this motion since May of 2018 and  
10          we believe Your Honor should let the exhibits  
11          in.

12           Thank you.

13           THE COURT: Thank you.

14           Ms. Court Reporter, do you have the time  
15          we started the hearing?

16           THE COURT REPORTER: Yes, Judge. 10:25.

17           THE COURT: Thank you.

18           So that's right about at an hour when we  
19          started the hearing. I had some introductory  
20          comments that I made, so you can go ahead and  
21          proceed, Mr. Scarola, and let's see how we do.

22           MR. SCAROLA: Thank you very much, Your  
23          Honor.

24           THE COURT: All right. And, again, just  
25          so that the record's clear, today we're only

1 dealing with the issue vel non of the late  
2 introduction of the exhibits as alleged by  
3 Edwards' counsel. We're not dealing with  
4 anything having to do with the admissibility  
5 whatsoever. I want to make that clear today.

6 Mr. Scarola?

7 MR. SCAROLA: Thank you very much, Your  
8 Honor.

9 Your Honor, the first argument made by  
10 opposing counsel was that we have somehow  
11 stipulated to an unlimited, unrestrained  
12 amendment to exhibit lists as a consequence of  
13 the pretrial stipulation that was ordered in  
14 this case. That pretrial stipulation says that  
15 the parties reserve their right to amend.

16 The only right to amend is the right that  
17 is defined by Your Honor's pretrial order. And  
18 that right is that a party desiring to use an  
19 exhibit or a witness discovered after counsel  
20 have conferred pursuant to paragraph D shall  
21 immediately furnish the Court and other counsel  
22 with a description of the exhibit or the  
23 witness's name and address, and the expected  
24 subject matter of the witness's testimony  
25 together with the reason for the late discovery

1 of the exhibit or witness list.

2 Use of the exhibit or witness may be  
3 allowed by the Court for good cause shown or to  
4 prevent manifest injustice.

5 We did not hear one word about when these  
6 exhibits were discovered, when they were  
7 discoverable, or why they were not listed  
8 sooner.

9 And while opposing counsel repeatedly  
10 refers to what he and his law firm did, he has,  
11 in this hearing, as in other hearings,  
12 attempted to separate himself out from the  
13 conduct of prior counsel in this litigation,  
14 which has gone on now for close to a decade.

15 While Mr. Link says "we" started looking  
16 at the background with respect to Mr. Edwards'  
17 clients after the Court made a specific ruling  
18 that Brad Edwards was going to be allowed to  
19 talk about these clients, and I have two things  
20 to say about this, the documents that Mr. Link  
21 is attempting to add are documents that were  
22 developed in the course of the discovery by  
23 Mr. Epstein while those individuals' claims  
24 were pending against Mr. Epstein.

25 Before the malicious prosecution case was

1           ever filed, this billionaire conducted an  
2           extraordinary investigation into the  
3           backgrounds of these young women/children to  
4           try to uncover any and every dirt that he  
5           possibly could in order to attack their  
6           credibility, in order to attack the damages  
7           that they alleged -- they were alleged to have  
8           sustained, and in order to attack the claims  
9           that were being made against him in any way  
10          possible.

11           THE COURT: Well, let me tell you what my  
12          concern is, and I'll let Mr. Link speak to this  
13          later as one of the issues that has apparently  
14          come up with this. Is while relevance  
15          obviously is something to deal with when the  
16          exhibit is being proffered in or outside the  
17          presence of the jury, when it comes to these or  
18          some of these exhibits, especially as they deal  
19          with these young women, and when I use that  
20          term, it's not to be confused with their age,  
21          it's only as a matter of trying to put a label  
22          on them now. And so for that reason, it's more  
23          of a convenience issue than it is a  
24          description.

25           But, when we're talking about things that

1           transpired years later, and what I mean by that  
2           is Mr. Rothstein -- strike that.

3           Mr. Epstein's claim is brought in 2009,  
4           and the, there are arrests, whatever there may  
5           have been, photographs that were taken years  
6           after that. My initial concern is what does  
7           this have to do with Mr. Epstein's bringing of  
8           the case in 2009? And what does that have to  
9           do with then his voluntary dismissal of his  
10          claim shortly thereafter, and Mr. Edwards'  
11          claim that we're trying here pertaining to  
12          malicious prosecution. That's where I'm a bit  
13          confused.

14          MR. SCAROLA: Your Honor, there are --  
15          there are a lot of arguments that can be made  
16          about the relevance and materiality of a lot of  
17          these documents. But as Your Honor indicated  
18          at the beginning of this hearing, we're not  
19          there yet. We're not talking about whether  
20          they are relevant and material, whether they  
21          are hearsay, whether they're secondhand  
22          knowledge, whether you can attempt to impeach a  
23          witness with anything other than the questions,  
24          have you ever been convicted of a crime? If  
25          so, how many times? There are a lot of

1           these --

2           THE COURT: A felony or a crime.

3           MR. SCAROLA: Involving moral turpitude.

4           THE COURT: Right. That involves moral  
5           turpitude.

6           MR. SCAROLA: Yes, sir. So there are a  
7           lot of substantive objections that we would  
8           have to a great deal of this material if it  
9           were properly listed and could even be  
10          considered as a potential exhibit. But right  
11          now we're talking about whether we even get  
12          into those things.

13          And, one of the reasons why these exhibits  
14          should not be considered is because getting  
15          into those things alone with regard to the  
16          volume of exhibits that are attempted to be  
17          listed will inevitably preclude us from going  
18          to trial on December 4, no doubt about that at  
19          all.

20          There are motions in limine that would  
21          need to be filed, there are witnesses that  
22          would need to be deposed, there are all sorts  
23          of objections that are substantive that would  
24          need to be dealt with in advance of trial.  
25          There are authenticity questions. There are a

1 lot of issues.

2 But right now I'm attempting to do what I  
3 think the Court has asked us to do, and that is  
4 to focus on whether we ever reach those issues.  
5 So, that's why I deal first with the argument  
6 that we've stipulated that all of these are  
7 properly listed. That's absolutely not  
8 correct.

9 And the second argument that is made is  
10 that if there was any compliance with the  
11 Court's order, then under Binger you must admit  
12 these documents because there is no prejudice.

13 I handed Your Honor an analysis of Binger,  
14 and it is a case which I know Your Honor is  
15 very familiar with, you have commented on it  
16 not only in this case, but in others on many  
17 occasions. And while Binger is attempted to be  
18 categorized as a case that held that in the  
19 absence of prejudice, late-disclosed witnesses  
20 and exhibits must be admitted, that is not the  
21 holding in Binger. That is absolutely not what  
22 Binger teaches.

23 Binger teaches that prejudice is one of  
24 multiple considerations. And I'll get back to  
25 talking about that. But before I do, I want to

1 talk briefly about the three categories of  
2 documents which, as acknowledged by Mr. Link,  
3 have already been, in earlier rulings, excluded  
4 by Your Honor. The first of those categories  
5 is a vast number of emails that were culled  
6 from production that consisted of 27,500 and --

7 THE COURT: 42.

8 MR. VITALE: 42.

9 MR. SCAROLA: Thank you both.

10 --27,542 documents.

11 Now, those documents, to the extent that  
12 they were discoverable, and it has been  
13 represented that these are all discoverable  
14 documents out of those 27,000-plus documents.  
15 To the extent they were discoverable, those  
16 documents were turned over in late 2010 or  
17 early 2011.

18 The defense, not Mr. Link, but  
19 Mr. Epstein's privately retained counsel, all  
20 of them, and there have been many, they have  
21 had access to those documents, they've been in  
22 their possession for seven years. There is no  
23 way that they can satisfy that portion of the  
24 Court's order that talks about a party desiring  
25 to use an exhibit or witness discovered after

1 counsel have conferred pursuant to paragraph D,  
2 which requires the preparation of exhibit  
3 lists. These aren't documents that were  
4 discovered after the exhibit lists were  
5 prepared. These are documents that the defense  
6 has had for seven years.

7 Now, what they have done is out of those  
8 27,000 documents, they've cherry-picked  
9 whatever number it is that are included here.  
10 And what that means --

11 MR. LINK: Your Honor, I'm sorry for  
12 interrupting. I just want the record to be  
13 clear. Those emails did not come from that  
14 disk.

15 Those are not emails, Mr. Scarola, from  
16 the -- you keep saying the 27,500. Those were  
17 not from that disk, Your Honor.

18 MR. SCAROLA: I'm not saying --

19 MR. LINK: Just so the Court is clear.

20 MR. SCAROLA: I'm not saying they were  
21 from the disk. These are documents that were  
22 produced that originated on the disk. The only  
23 way these emails -- the only way these emails  
24 are discovered is because a subpoena is issued  
25 to the bankruptcy trustee, who was the

1           custodian of RRA's email servers.

2           THE COURT: By the way, where are these  
3           47 emails listed in your exhibit list?

4           MR. LINK: Your Honor, because you sealed  
5           them, we did not want to reference them in the  
6           exhibit list. We did a notation that we would  
7           add those once Your Honor did what you said you  
8           were going to do, which was the in camera  
9           inspection. Because you sealed them and  
10          haven't ruled whether they're privileged or  
11          not, we did not want to list them.

12          THE COURT: I don't remember agreeing to  
13          an in camera inspection at this point.

14          MR. LINK: No, I apologize. We've asked  
15          for one, the Court hasn't conducted one. But  
16          you had us seal those exhibits, so I didn't  
17          want, since you ordered us to seal them, to  
18          then list them.

19          THE COURT: Okay. Well, it's really  
20          important to be careful with your speech,  
21          because, again, and I don't mean to continue to  
22          rehash this, but it's important that at each  
23          stage of the proceeding anyone who reviews this  
24          record understands that we're working with  
25          somewhere in the neighborhood of 1,600 files

1 per division, and it's very, very difficult for  
2 me, where I'm dealing with many, many complex  
3 cases, including this one, from the standpoint  
4 of complexity, more so due to age and length  
5 and number of exhibits and number of issues  
6 that have had to be addressed, that I can't  
7 remember everything.

8 And I don't think it would be fair for  
9 anybody to think that anyone could remember  
10 anything under these circumstances, where I'm  
11 working alone. So, and when I say "alone," I  
12 don't have, as I've mentioned many times, nor  
13 do any of us in this division have a dedicated  
14 law clerk or staff attorney.

15 We have a pool who work very hard, but it  
16 is insufficient to accomplish what we need to  
17 do on a daily basis. But irrespective of that,  
18 I'm here wading through literally thousands of  
19 pieces of paper on my desk, at the bench at the  
20 current time, and trying to look through these.

21 So, again, I just would remind both sides  
22 to always be very, very circumspect when making  
23 representations, because it makes me then have  
24 to refocus my attention on something that takes  
25 me off of what I've been thinking about; i.e.,

1 did I or did I not agree to do an in camera  
2 inspection of emails that I have no  
3 recollection of agreeing to.

4 But, again, I'm not being critical in any  
5 disrespectful way, so just to remind you of the  
6 burden on this Court, as well as the others  
7 here in the 15th Judicial Circuit Civil  
8 division. And, again, there's nothing we can  
9 do about it, we just have to plow through it  
10 and do the best we can.

11 So, if 47 exhibits aren't listed here, I  
12 don't think really we should focus on those  
13 today. I'll be more than happy to do it at  
14 another time.

15 MR. SCAROLA: I wasn't intending to focus  
16 on those, Your Honor, and I'm sorry if my  
17 language is imprecise, but what I am trying to  
18 point out is that these emails are part of the  
19 emails that originated on the Rothstein,  
20 Rosenfeldt, Adler servers. They were, that  
21 electronic data, was transferred to compact  
22 disks. The compact disks were used to print  
23 out emails, including those that Mr. Link is  
24 now listing and attempting to use.

25 When those emails were printed out in hard

1 copy, they were delivered to -- they were  
2 delivered to Brad Edwards to prepare a  
3 privilege log.

4 Some of the documents were handed over at  
5 that point. They were divided into three  
6 categories, actually: Irrelevant documents,  
7 documents produced for attorneys' eyes only,  
8 and then privileged documents that were not  
9 produced.

10 But documents were delivered to  
11 Mr. Epstein's counsel, Fowler White, during  
12 that period of time. And --

13 THE COURT: You're talking about  
14 irrespective of what was on the disk?

15 MR. SCAROLA: Well, when you say  
16 "irrespective"...

17 THE COURT: Irrespective, meaning they  
18 were separately sent without consideration of  
19 what may or may not have been on that  
20 particular disk.

21 MR. SCAROLA: Well, they originated on the  
22 disk. That's where all the emails were.

23 THE COURT: I understand what you're  
24 saying. But what I think I -- what I think I'm  
25 trying to say is that the production by

1 Mr. Edwards to Epstein may have come from the  
2 disk, if you will?

3 MR. SCAROLA: Yes.

4 THE COURT: But were not produced by way  
5 of a disk. That disk --

6 MR. SCAROLA: They were produced in hard  
7 copy.

8 THE COURT: Right. That disk was  
9 retrieved in some other fashion that we've  
10 talked about, and that was the choice that was  
11 made to have Fowler White do what they were --

12 MR. SCAROLA: Yes. And that choice is the  
13 subject of the 47 documents that we'll talk  
14 about later.

15 THE COURT: Okay.

16 MR. SCAROLA: My only point here is that  
17 these documents, the email that is being  
18 referenced, including, in particular, the one  
19 or the two that are a part of Exhibit  
20 Number 211, that email has been in Epstein's  
21 possession for seven years.

22 He's had it for seven years. He could  
23 have listed it anytime that an exhibit list was  
24 required to be disclosed. This was not newly  
25 discovered by any means at all.

1           And there is no justification for not  
2           having included it on an exhibit list earlier,  
3           with one exception, and that is new counsel  
4           decided on a new strategy and decided that they  
5           wanted to try to use this email after all of  
6           the applicable deadlines were passed.

7           Now, let's just take this one document as  
8           an example --

9           THE COURT: Before we do that, how do you  
10          interpret that paragraph D of the joint  
11          pretrial stipulation that was alluded to by the  
12          Court, and by Mr. Link, to some degree, and the  
13          language that says "The parties do not waive  
14          their right to amend their exhibit lists and to  
15          identify additional objections for those  
16          exhibits that have not yet been disclosed  
17          and/or provided to correspond with the parties'  
18          respective exhibit lists."

19          MR. SCAROLA: That's where I tried to  
20          start with my comments to the Court, Your  
21          Honor. All that says is we are preserving the  
22          rights to amend that are defined in the Court's  
23          pretrial order. That's all that it says.

24          THE COURT: All right.

25          MR. SCAROLA: I can't imagine any

1 competent trial lawyer, and I like to think  
2 that I at least have a minimum level of  
3 competence, who is going to say, You can add  
4 anything you want to, anytime you want to, and  
5 I waive any right I have to object.

6 THE COURT: Well, I would hope so.

7 MR. SCAROLA: I would hope so, too.

8 So it does make sense to say, the Court  
9 has defined the circumstances under which we  
10 have a right to amend, and we're not waiving  
11 the right to amend that's defined in the  
12 Court's pretrial order. That's all that that  
13 was intended to say. That's all it reasonably  
14 could say.

15 So returning back to this exhibit, as an  
16 example, because it's the example that opposing  
17 counsel chose to focus on.

18 THE COURT: Talking about Number --

19 MR. SCAROLA: This is 211.

20 THE COURT: -- 211. Okay.

21 MR. SCAROLA: Number 211. So I gather  
22 from the argument that's made is that they want  
23 to try to use this exhibit to --

24 THE COURT: Unfortunately -- is 211 one of  
25 the emails that were not included because of a

1 potential in camera inspection?

2 MR. LINK: No, sir.

3 MR. SCAROLA: No. None of these are.

4 MR. LINK: None of these are part of the  
5 47. It's in the big book, Your Honor.

6 THE COURT: Okay. I have it.

7 MR. SCAROLA: Okay.

8 THE COURT: That was the one with  
9 Mr. Rothstein, the eight kids?

10 MR. LINK: That's the one, sir.

11 MR. SCAROLA: Yes. This is Brad Edwards  
12 writing to Russ Adler --

13 THE COURT: I see, the first one is  
14 Mr. Edwards writing to Mr. Adler, correct?

15 MR. SCAROLA: Right.

16 THE COURT: "Well, do you want me to talk  
17 to him about our Epstein information today? Or  
18 do you want to also be involved and set it up  
19 some other time? Bradley Edwards."

20 MR. SCAROLA: Right. And the suggestion  
21 is made that this impeaches Brad Edwards'  
22 testimony that he only met with Mr. Rothstein  
23 and spoke about the Epstein cases on two  
24 occasions.

25 Well, first of all, it doesn't do that.

1 But, secondly, if this is going to be a piece  
2 of evidence, I want to talk to Russ Adler about  
3 it. I want to find out what happened after  
4 July 20, 2009, at 10:45 a.m.

5 THE COURT: Is Mr. Adler listed as a  
6 witness?

7 MR. SCAROLA: I don't even know at this  
8 point whether Mr. Adler's listed as a witness.  
9 I certainly don't intend to call him. I had no  
10 plans to call him. I haven't interviewed him.  
11 I haven't deposed him. I think -- isn't  
12 Mr. Adler one of those individuals who may be  
13 doing time? I think he may be.

14 THE COURT: I think the time that he was  
15 sentenced to, if I recall correctly, was not a  
16 significant amount of time.

17 MR. SCAROLA: I don't know, Your Honor,  
18 but I certainly haven't had any communications  
19 with --

20 THE COURT: Well, significant if I put it  
21 in the same context of Mr. Rothstein.

22 MR. SCAROLA: Understood.

23 THE COURT: Any time is significant. I  
24 don't want to suggest that I'm minimizing that  
25 at all.

1           MR. SCAROLA: Okay. Well, I do know that  
2 Mr. Rothstein was deposed. I do know that it  
3 took considerable effort to get to depose  
4 Mr. Rothstein. I do know that this was not a  
5 listed exhibit at the time that Mr. Rothstein's  
6 deposition was taken, so he couldn't have been  
7 questioned about it.

8           Would I have questioned him about it if it  
9 was on the defense exhibit list? I certainly  
10 would have. Is it possible, conceivably, to be  
11 able to do that between now and December 4?  
12 The answer to that is absolutely not. And I  
13 think that the Court can recognize the fact  
14 that that can't occur.

15           THE COURT: For ease of reference, like I  
16 like to do during all of these hearings when  
17 dates are brought into play, today is  
18 November 1, 2018, [sic] and the trial is  
19 scheduled for December the 4th of 2018.

20           MR. SCAROLA: Yes, sir.

21           MR. LINK: May I answer the Court's  
22 question about Mr. Adler you asked?

23           MR. SCAROLA: Could I -- I'm sorry, go  
24 ahead.

25           MR. LINK: I just wanted to answer the

1 Court's question. He was deposed in this case  
2 on April 20th, 2011, Your Honor.

3 MR. SCAROLA: In which case, since this  
4 wasn't an exhibit, he certainly wasn't asked  
5 any questions about it.

6 THE COURT: All right.

7 MR. SCAROLA: So that, I -- I focus on  
8 this one example, because it's the one example  
9 that opposing counsel chose to call the Court's  
10 attention to. And it is illustrative of the  
11 problem that exists with regard to every one of  
12 these documents.

13 Since they weren't listed as exhibits,  
14 they could not have been the focus of prior  
15 discovery, including depositions that were  
16 taken of people who either were direct parties  
17 to these communications or were in a position  
18 to have knowledge with respect to the subject  
19 matter of the communications. That wasn't  
20 done. And would obviously, in a case of this  
21 magnitude, have been included as part of the  
22 discovery had these exhibits been timely  
23 disclosed.

24 Now, the other problem, as I began to  
25 address, was that these are the documents out

1 of the disclosed thousands of documents that  
2 the defense has chosen to list. There may be  
3 ten other emails that relate to this subject  
4 matter.

5 Incidentally, there were 20 --  
6 approximately 21,000 hard-copy documents that  
7 were delivered in discovery. We would need to  
8 review 21,000 documents in order to determine  
9 whether there's anything we want to include on  
10 our exhibit list in response to the  
11 cherry-picked documents that they have  
12 included. Beyond that, there very well may be  
13 privileged documents that we might want to  
14 attempt to use, and frequently that privilege  
15 is not an attorney's privilege to waive.

16 It would require that we contact, one, a  
17 client, if it's an attorney-client privileged  
18 document, in order to secure permission from  
19 the client to waive the privilege in order to  
20 use it in rebuttal to the documents that they  
21 have chosen, cherry-picked to use, or two,  
22 there was, in place, a joint prosecution  
23 agreement for all communications that occurred  
24 among counsel who were prosecuting claims  
25 against Jeffrey Epstein simultaneously.

1 Under the terms of that joint prosecution  
2 agreement, that common interest privilege  
3 agreement, Bradley Edwards cannot unilaterally  
4 decide that he's going to use any of those  
5 documents. He is obliged to get the clearance  
6 of every other participant in that agreement in  
7 order to be able to use those documents.

8 So there is a complicated multistep  
9 process involving, first, the review of 21,000  
10 documents, the selection of those that are  
11 relevant and material with regard to the  
12 subject matter that is raised in these  
13 documents --

14 THE COURT: But, excuse me, Mr. Scarola.  
15 I hate to interrupt you.

16 MR. SCAROLA: No, no, that's quite all  
17 right.

18 THE COURT: We're deviating, in my view,  
19 respectfully, from what these exhibits that are  
20 listed in the latest exhibit list filed by  
21 Epstein and these 47 proposed exhibits that  
22 have not yet been listed, at least for purposes  
23 of today's hearing.

24 I'm really -- I really want to focus on  
25 those exhibits that were filed in the May 2

1 filing.

2 MR. SCAROLA: Yes, sir. And I'm sorry if  
3 I didn't make myself clear, but that's what I  
4 was attempting to do. What I'm saying is --

5 THE COURT: Go ahead.

6 MR. SCAROLA: -- that with regard to these  
7 exhibits, one of the issues in Binger, not the  
8 only issue, but one is: Is there prejudice?  
9 And my response is, yes, there is prejudice  
10 because if you allow this to come in, I've got  
11 to review 21,000 documents to see what else is  
12 relevant to this topic. If any of those  
13 relevant documents are privileged documents  
14 that I want to use, there's a multistep process  
15 that I must go through in order to be able to  
16 use those documents in response to this  
17 nonprivileged document.

18 I hope that I've -- that I've explained  
19 that better.

20 THE COURT: The only question that I would  
21 have, though, is that because there are  
22 numerous emails under the subheading  
23 communication, starting with Number 171 and  
24 going to -- in large part they're emails.  
25 There are a couple of circumstances in this

1 communication subheading, there are -- there's  
2 a, for example, Wackenhut incident report for  
3 number 2 -- 332 and 334, and then an affidavit  
4 of Ken Jenne, the former sheriff of Broward  
5 County also listed.

6 But, the bulk, by far, and I believe  
7 it's -- other than those three instances, and  
8 there's a letter also in 2016, so other than  
9 those four instances, they're all emails.

10 MR. SCAROLA: Yes, sir.

11 THE COURT: And I presume that most of  
12 those emails are in or among those 27,542 pages  
13 of documents; fair?

14 MR. SCAROLA: Yes, sir. I -- my belief is  
15 that they're all from that source.

16 THE COURT: Thank you.

17 So by and large, you're going to have to  
18 review these other 150 or so, and I'm just  
19 estimating, emails that have been listed here  
20 amongst those 27,542 pages to put those in  
21 context.

22 MR. SCAROLA: Only -- only if they are  
23 going to be permitted to be used.

24 THE COURT: Well, I don't know that yet,  
25 because I don't know what objections, if any,

1 have been made to these at this point in time.  
2 But I would suspect that there's a potential  
3 that some may be used.

4 MR. LINK: Oh, I think, Your Honor,  
5 because --

6 THE COURT: Are you thinking in good faith  
7 that every one of these would be subject to  
8 disallowance?

9 MR. SCAROLA: I believe that every one of  
10 them is subject to being disallowed. I think  
11 that the -- there are multiple reasons, they  
12 are in violation of this Court's order setting  
13 a time limit with regard to the disclosure of  
14 exhibits, and the use of any one of them would  
15 create substantial prejudice to the plaintiff  
16 for the reasons that I began to describe.

17 We're going to lose our trial date.  
18 That's a really big prejudice in this case.

19 THE COURT: I'm not even there yet. What  
20 I'm saying is only in relation to what you  
21 suggested today, that if any of these alleged  
22 late-listed emails, which number -- a relative  
23 few of the 150 or so that have been listed  
24 here, and even if we include the 47, the other  
25 140-some-odd that are late -- or that are

1 listed, but not allegedly late, would still, my  
2 point being, require this overarching analysis  
3 to put in context, whether it be for objection  
4 purposes, for admission purposes, for  
5 completion purposes, that being the rule of  
6 completeness, to put into context what some or  
7 all of these emails may have said, there may be  
8 emails that are helpful to your cause, so you  
9 may not object to them. That's the point I'm  
10 trying to make.

11 MR. SCAROLA: And Your Honor's right --

12 THE COURT: If it requires this  
13 overarching analysis, no matter how onerous it  
14 is for you and your firm members to go through  
15 a significant number of those 27,000  
16 and-some-odd pages, if not all of them.

17 MR. SCAROLA: We have, with respect to  
18 every properly listed exhibit, examined those  
19 documents, decided what we needed to do with  
20 respect to being prepared to address anything  
21 raised in those documents, we have considered  
22 whether there is other evidence originating  
23 from the disk or otherwise. We have examined  
24 witnesses with respect to those documents,  
25 including email, that were appropriately and

1           timely listed. That's all been done with  
2           regard to what was properly listed.

3           It has not even been begun with regard to  
4           everything that has been improperly listed.  
5           The 140 or whatever the number it is, of new  
6           email have not --

7           THE COURT: Those are not new emails.  
8           Those are the ones that have been listed, my  
9           presumption being for the time period as  
10          required by court order. It is only --

11          MR. SCAROLA: The yellow ones.

12          THE COURT: -- the yellow ones, which are,  
13          again, a relative few.

14          MR. VITALE: Approximately 19, Your Honor.

15          MR. LINK: I counted 13, Your Honor.

16          THE COURT: Whatever it might be, not  
17          counting 332 through 337 so, you know, we're  
18          talking about a number in the teens as  
19          juxtaposed to the 150 or some-odd entries here  
20          from 171 to 337. So...

21          MR. SCAROLA: Yes, sir. And every one of  
22          those 13, whatever the number is, are subjected  
23          to the same kind of analysis that we have dealt  
24          with with regard to Number 211, and that is we  
25          need to examine all of the other potentially

1 related emails with regard to this one,  
2 everything that occurred during that same time  
3 frame, we need to discuss it with Mr. Adler, we  
4 need to discuss it with Mr. Rothstein, and  
5 those are things that we have not done and  
6 cannot do in the available time. That's the  
7 only point I'm attempting to make.

8 So whether it's one document or 13  
9 documents, the same arguments pertain and the  
10 same basis exists for excluding them.

11 THE COURT: Was there any effort to  
12 contact any of the individuals mentioned for  
13 the 145, or whatever it may be, exhibits  
14 relating to emails here that were not  
15 late-listed?

16 MR. SCAROLA: I will tell you that we  
17 conducted a thorough preparation with regard to  
18 every properly listed email.

19 Beyond that, beyond that, I can't respond  
20 to the Court's question because of work product  
21 issues involved.

22 THE COURT: I'm not asking you for that.  
23 I'm asking only for what has been a matter of  
24 record. And that is, have there been  
25 depositions taken relative to the emails that

1           were timely listed?

2           MR. SCAROLA: There have been depositions  
3 taken of witnesses who were parties to the  
4 emails. There have -- and there have been  
5 discussions, both in deposition and outside  
6 deposition, with regard to what was going on in  
7 Rothstein, Rosenfeldt, Adler during the  
8 relevant period of time taking into  
9 consideration the subject matter that is  
10 disclosed in properly listed emails --

11           MR. LINK: Your Honor, I'm sorry to  
12 interrupt, but that's an inaccurate statement.  
13 I know it's not intentional, but I want the  
14 record to be clear.

15           Discovery was closed and this Court  
16 entered an order when it granted the  
17 continuance that said no more discovery. If we  
18 wanted something specific, come back and see  
19 the Court. So at the time every one of these  
20 exhibits were listed, discovery was closed,  
21 there were no depositions taken by Mr. Scarola  
22 after that time.

23           In addition, Your Honor said, if you need  
24 additional discovery, come and see me, and they  
25 did not come and see you once we properly

1 listed all but the 13 we're talking about  
2 today.

3 Thank you, Your Honor.

4 MR. SCAROLA: Your Honor, so that the  
5 record is clear, we know what the universe of  
6 emails was. And we had the opportunity and  
7 took that opportunity to discuss with those who  
8 were inside the firm at the time what was going  
9 on in light of what we knew could possibly be  
10 listed as proper exhibits.

11 THE COURT: All right. Thank you. You've  
12 answered my question.

13 MR. SCAROLA: Thank you, sir.

14 The second category, the second broad  
15 category that Mr. Link refers to are documents  
16 that relate to, as Mr. Link expressed it, the  
17 Court's ruling that Edwards could talk about  
18 his clients.

19 Now, the clients of Bradley Edwards are  
20 expressly identified in the complaint that  
21 Jeffrey Epstein filed against Bradley Edwards.  
22 They are specifically referenced in the  
23 malicious prosecution claim. The suggestion  
24 that the defense did not know that these were  
25 going to be issues until the Court ruled that

1 Bradley Edwards would be able to talk about  
2 these things, I don't know how that suggestion  
3 could be made in good faith.

4 THE COURT: Well, I mean, that kind of  
5 goes to what I was talking about earlier.  
6 Isn't his complaint, that being Mr. Edwards'  
7 complaint, directing the Court to, and  
8 directing anyone who reads it, to these three  
9 individuals?

10 MR. SCAROLA: Absolutely. No question  
11 about it. And, as I said, their credibility,  
12 the quality of their claims was thoroughly  
13 investigated by Mr. Epstein before Epstein sued  
14 Edwards or Edwards sued Epstein. He's known  
15 this all along. He made his allegations  
16 against Edwards knowing what their background  
17 was as of the time of his filing.

18 And as Your Honor has observed, much of  
19 what they are seeking to add now could not  
20 possibly be relevant or material to either the  
21 issue of probable cause, or the issue of  
22 damages, unless there is a concession that the  
23 reason why these three young lives were ruined  
24 is because of what Jeffrey Epstein did to them.  
25 And there has already been testimony about that

1 occurring.

2 How do you get in -- how do you possibly  
3 get in a police report about an arrest? How do  
4 you get that in? It can't come in. But, even  
5 assuming that these are things that were  
6 gathered by Epstein subsequent to the filing of  
7 Epstein's complaint against Bradley Edwards,  
8 they couldn't possibly contribute to the  
9 probable cause. They were unknown to him.  
10 They couldn't possibly contribute to anything  
11 he said in the complaint, they were unknown to  
12 him. And in many circumstances hadn't even  
13 occurred yet.

14 THE COURT: Well, that's what I alluded to  
15 earlier. But, again, my focus was shifted, and  
16 I think properly so, to getting back to the  
17 late filing issue.

18 MR. SCAROLA: Yes. And with regard --

19 THE COURT: And to return to what you  
20 suggested, I do, because I think it just makes  
21 sense, even though I have my concerns over its  
22 ultimate admissibility, but we're really not  
23 there yet.

24 MR. SCAROLA: But the suggestion was made  
25 in argument that the reason why we were -- were

1 listing these late is because the Court had not  
2 yet ruled that this was going to be relevant  
3 and material information. That just isn't so.

4 It was relevant and material, whether it's  
5 admissible or not, whether it's really relevant  
6 or not, based upon the allegations included  
7 within the original complaint against Brad  
8 Edwards and the malicious prosecution claim  
9 that is currently being prosecuted in front of  
10 this Court.

11 There is no way to excuse this  
12 nondisclosure, either because these documents  
13 were recently discovered, because they have  
14 been known and knowable for many years, or on  
15 the basis that the issues have somehow changed  
16 as a result of some ruling that Your Honor  
17 made. That's just not the case.

18 And we cannot lose sight of two important  
19 things with regard to probable cause. One, as  
20 opposing counsel has repeatedly acknowledged,  
21 probable cause is a legal issue for  
22 determination by the Court. It is not a jury  
23 issue. This Court decides on probable cause.

24 And this Court decides on probable cause  
25 based upon what Jeffrey Epstein knew as of the

1 time that Jeffrey Epstein filed the complaint.  
2 What has Jeffrey Epstein told us about what  
3 Jeffrey Epstein knew as of the time he filed  
4 the complaint? What he's told us is, "I refuse  
5 to answer on the grounds that it may tend to  
6 incriminate me. I assert my Fifth Amendment  
7 privilege."

8 THE COURT: And if I'm not mistaken,  
9 that's all we're going to know.

10 MR. SCAROLA: That's all we're going to  
11 know because it has also -- it has also been  
12 represented repeatedly, and this Court has made  
13 rulings based upon that representation,  
14 Mr. Epstein will not attend this trial. He  
15 will not testify, he will not attend this  
16 trial. So, the argument --

17 THE COURT: And just for the record, that  
18 has to be emphasized here when it comes to the,  
19 again, alleged late filing of these "public  
20 records" of the victims here.

21 And the fact that Mr. Epstein will not be  
22 at trial, and his testimony essentially  
23 consisted of, as far as the substantive  
24 information that was transmitted at the  
25 deposition or at the depositions, I, I can't

1 remember if it was more than one, but the one I  
2 do recall is the one that's been emphasized  
3 here regarding the term "ginned up," and that  
4 is what was your motivation for suing  
5 Rothstein, Edwards and [REDACTED] was so as to bring to  
6 the attention of whomever it was to be brought  
7 that these claims were ginned up, and there was  
8 an attempt to somehow defraud those who were  
9 investing in Mr. Rothstein's Ponzi scheme or,  
10 again, words to that effect. I don't have it  
11 in front of me. But that was the gist of the  
12 information that was proffered.

13 Again, going back to something that  
14 perhaps I shouldn't at this point, but I am at  
15 a loss that if he's not going to testify here,  
16 and that is essentially the sum and substance  
17 of his substantive testimony pertaining to the  
18 rationale of filing the lawsuit, how any of  
19 this is even able to be introduced as part of  
20 his defense, particularly whereas here we're  
21 talking about many of these entries coming well  
22 after the alleged incidents involving  
23 Mr. Epstein and these three individuals.

24 MR. LINK: Your Honor, may I respond to  
25 that?

1           MR. SCAROLA: And all of them coming --  
2 all of them coming after the lawsuit was filed  
3 and could not possibly have formed part of the  
4 basis of probable cause, because he had no idea  
5 about any of this.

6           THE COURT: And, respectfully, also coming  
7 in just a few months ago.

8           Yes, Mr. Link?

9           MR. LINK: I didn't -- I thought we had  
10 made an agreement we weren't doing  
11 admissibility --

12          THE COURT: We're not. But, again, it's  
13 somehow -- or somewhat of a futile exercise, in  
14 my view, and we all, I think, have an aversion  
15 to not wasting time, or an aversion to wasting  
16 time.

17          So as to -- to look at this rationally and  
18 to look at it practically, and attempting to  
19 somehow cobble together how this could even  
20 possibly be used in this Court in this case.

21          MR. LINK: May I explain, Your Honor?  
22 Because I can answer the question.

23          THE COURT: Yes.

24          MR. LINK: So Mr. Edwards has the burden  
25 of proof, not Mr. Epstein. The case law

1 suggests he has a very high burden of proof to  
2 demonstrate malicious prosecution. Mr. Edwards  
3 is going to get on the stand. I must be  
4 allowed to cross-examine him. I don't have to  
5 sit back, let him testify to anything he wants  
6 and not be able to cross-examine him because  
7 Mr. Epstein's not going to testify.

8 THE COURT: I have no problem with --  
9 excuse me just a minute, please.

10 As you are very much aware, I have no  
11 problem with a vigorous cross-examination. The  
12 word "cross" is not -- is meant as, at least in  
13 part, has connotations of anger. So, I have no  
14 problem with that.

15 What I am suggesting, however, is  
16 Mr. Edwards was deposed, you said, by you, and  
17 I presume by way of court order --

18 MR. LINK: Incriminated, yes, sir.

19 THE COURT: -- in the latter part of  
20 December of 2017, is that what you said?

21 MR. LINK: I believe that's right, it was  
22 December.

23 THE COURT: All right. Now, you have  
24 every right to cross-examine him. My point in,  
25 again, trying my best in my role as a

1 nonadvocate, and that is as a neutral party  
2 trying my best to level the playing field and  
3 now confronted with from 400 -- numbers 445  
4 through 543, so approximately 100 public  
5 records revelations.

6 MR. LINK: Yes, sir.

7 THE COURT: And I use that term  
8 purposefully. Because what I presume to be the  
9 answer is, when you took Mr. Edwards'  
10 deposition in December of 2017, he was not  
11 provided with these documents to be able to  
12 discuss them, to be able to review them, even  
13 if it was at his deposition you said, look,  
14 here's public records that you probably are not  
15 totally aware of, you may be, you may not be,  
16 but here they are.

17 Mr. Scarola may have objected, may have  
18 requested the termination of the deposition to  
19 seek a protective order so that he,  
20 Mr. Edwards, would have the opportunity to  
21 properly prepare his testimony in relation to  
22 these records. Because if I'm gathering what I  
23 think I'm going to gather by way of your  
24 response --

25 MR. LINK: Yes, sir.

1 THE COURT: -- he wasn't given these  
2 records at his deposition, correct?

3 MR. LINK: They weren't, and I never would  
4 do that in a deposition, Your Honor. Why do I  
5 have to show him my cross? What in the rule  
6 says I have to confront him at deposition with  
7 exhibits that I want to use at trial?

8 THE COURT: Again, is this a question or  
9 is this rhetorical?

10 MR. LINK: No, it's a statement, because I  
11 don't know of any rules --

12 THE COURT: When you start a sentence with  
13 "what," it sounds to me like a question.

14 MR. LINK: It was, and I withdrew it.

15 THE COURT: Very well. But my response  
16 would have been, had you not withdrawn it, is  
17 the overarching, the pervasive rule of we are  
18 not going to competence trial by ambush.

19 MR. LINK: Sir, that's why they're listed  
20 on the exhibit list. I don't have to ask him  
21 during deposition.

22 THE COURT: But the point I'm making,  
23 Mr. Link, and I apologize for my facial and  
24 hand gestures. That wasn't meant to be  
25 anything that was directed to anyone.

1 MR. LINK: It's okay.

2 THE COURT: My respectful point is that in  
3 order to properly prepare for one of the most  
4 critical parts of a case, that being the  
5 plaintiff's deposition, especially where here  
6 it's coming almost ten years after a given case  
7 has been filed, that that party has the  
8 opportunity to prepare themselves with what is  
9 going to be confronting them relative to the  
10 material elements of the case.

11 And that brings me precisely to what we're  
12 dealing with now, and that is if at the time in  
13 December we had set this case for trial in  
14 2017, again, we're now into almost the trial  
15 being reset for December, we freeze that time  
16 period, we don't have these public records  
17 listed as exhibits. We fast-forward a bit to  
18 when I set the trial again, and that was what  
19 month?

20 MR. VITALE: March, Your Honor.

21 THE COURT: March. Recognizing the time  
22 that we're dealing with here, the length that  
23 everyone has to, really, except for you and  
24 Ms. Rockenbach, but including myself, for the  
25 last almost four years, having to deal with

1           this case, with various iteration of counsel  
2           for Mr. Epstein, and from Mr. Edwards'  
3           standpoint and from Mr. Epstein's standpoint,  
4           having to deal with this for the last close to  
5           ten years. Certainly for Mr. Scarola's  
6           standpoint, having to deal with this case since  
7           2009. That's a long time.

8           And my purpose here, whether it be this  
9           case or any other case that I preside over, is  
10          a process, and I may have mentioned these to  
11          you-all. I wouldn't be here unless I had an  
12          abiding respect to maintain what I perceive to  
13          be the requisite process.

14          What does that mean? That doesn't have  
15          anything less of a meaning than fundamental  
16          fairness. What is the right thing to do. I  
17          don't have to represent a client. That's the  
18          beauty of the job, maybe one of the few. But I  
19          don't have to answer to anyone other than the  
20          law, and my own legal, and to a degree, moral  
21          compass when it comes to making rules.

22          And I'm not using the word "morality" as  
23          it has to do with anybody involved in this  
24          particular case. It may have been a poor  
25          choice of words. But essentially what I mean

1 by that is when I look in the mirror at the end  
2 of the day, can I respond to the one singular  
3 question, "Did I do the right thing by those  
4 who came before me, no matter how rich, no  
5 matter how poor, no matter how vilified, no  
6 matter how promoted or well thought of?"

7 So the point I'm trying to make here is  
8 precisely the fact that in this particular  
9 setting, when the plaintiff is deposed and is  
10 subject, then, to impeachment, not being aware  
11 at that time when the case was teed up for  
12 trial in December of 2017, which coincidentally  
13 was the time his deposition was taken, and then  
14 if we fast-forward and we freeze March when,  
15 but for a technical issue that arose, having  
16 nothing to do with the Edwards versus Epstein  
17 case, but simply having to do with the  
18 corollary of Epstein versus Rothstein, and that  
19 technicality, these case -- this case would  
20 have been tried in March of 2018.

21 See? Without this listing of almost 198  
22 public record documents. And there's probably  
23 more than 98, many of these are multipages,  
24 obviously. But 98 named exhibits, which are  
25 all potentially used as fodder for

1 cross-examination of the plaintiff, who until  
2 these were listed, wasn't aware that they were  
3 going to even be utilized.

4 Thank you for listening. Go ahead.

5 MR. LINK: No, my pleasure. I'd like to  
6 make just a few points that I think I need to  
7 for the record, Your Honor.

8 One, the plaintiff has known about every  
9 one of the emails because he was --

10 THE COURT: I'm not talking about emails,  
11 I'm talking about these public records now.

12 MR. LINK: I know. But he's known about  
13 the emails.

14 THE COURT: Okay.

15 MR. LINK: Two, I don't believe I have any  
16 obligation under any rule of civil procedure or  
17 case that I know of to ever, taking the  
18 deposition of a plaintiff or anyone else, to  
19 show them documents that I intend to use in  
20 cross. I may choose to, but I don't have to.

21 Three, all of these documents have been  
22 listed since at least May, if not from before.

23 THE COURT: Well, I don't know that. All  
24 of these --

25 MR. LINK: Have been listed since May.

1 THE COURT: I'm going by way of your color  
2 coding.

3 MR. LINK: Yes, sir.

4 THE COURT: And that yellow color coding  
5 on all of those 98 public records exhibits have  
6 been identified as newly added as of May of  
7 2018.

8 MR. LINK: They were on our December  
9 clerk's trial list, Your Honor. December 2017.  
10 So they have been listed --

11 MS. ROCKENBACH: March.

12 MR. LINK: March, apologize. They've been  
13 listed since March of 2018, every single one of  
14 them. So they were not just shown to them,  
15 they have had -- this trial -- what is that --  
16 eight months of time with them. Eight months.

17 I also want to point out that not once  
18 during the eight months did counsel for  
19 plaintiff ask this Court for any additional  
20 discovery based on the exhibits that were  
21 listed. And this Court gave us permission to  
22 do that.

23 I also want to point out, Your Honor, that  
24 if there's any depositions or discovery that  
25 plaintiff needs to take, we have no objection

1 under Binger to opening up discovery for them  
2 to do that. So that if there is any prejudice,  
3 which we don't believe exists, can be cured by  
4 their taking discovery.

5 Next, although it is not what we have  
6 asked for, if, in fact, the trial needs to be  
7 moved 30 to 60 days, we will not object to  
8 that, so that any prejudice that can be  
9 eliminated can be eliminated.

10 THE COURT: I'm not going to do that.

11 MR. LINK: I understand.

12 THE COURT: There is no way I'm going to  
13 do that.

14 MR. LINK: I understand.

15 THE COURT: It would be an absolute --  
16 that would be -- if I did that, Mr. Link, would  
17 be an example of what I just said earlier that  
18 would be when I look in the mirror, I would  
19 probably have to resign --

20 MR. LINK: Your Honor, I understand that.

21 THE COURT: -- before I would be able to  
22 adequately answer to my own compass.

23 MR. LINK: I understand that, sir. But I  
24 need to offer that under the cases I've read  
25 under Binger, so that I have offered solutions

1 to ameliorate their prejudice. Whether the  
2 plaintiff wants to do it or the Court wants to  
3 agree, I understand that's your prerogative.

4 I just wanted to make sure, because I've  
5 read all the Binger cases, that I make  
6 available to the plaintiff, and to this Court,  
7 every opportunity to cure whatever prejudice  
8 they think they have. I don't believe they've  
9 had any since they've had these emails, they've  
10 had these public documents, they've had  
11 everything on our list since no later than  
12 March of 2018.

13 MR. SCAROLA: May I conclude my argument,  
14 please, Your Honor?

15 THE COURT: Well, he's throwing it back  
16 into your court.

17 MR. SCAROLA: Thank you, Your Honor.

18 THE COURT: And I agree it's the issue  
19 when he's saying -- he's saying that it was  
20 dilatory on the part of Mr. Edwards and counsel  
21 not following through with these records that  
22 were listed in March. And I'm only going to  
23 the public records issue right now that were  
24 listed in March of 2018 in preparation for the  
25 then-March trial.

1 MR. SCAROLA: Your Honor --

2 THE COURT: And hence, you've waived any  
3 reasonable objection as it relates to the late  
4 filing of those public records entries.

5 MR. SCAROLA: Your Honor, the documents  
6 were listed in March. The plaintiff responded  
7 with a motion to strike the documents listed in  
8 March. All of those exhibits were stricken by  
9 court order. We don't need to prepare to  
10 respond to stricken exhibits. We are here  
11 because they are again attempting to list  
12 documents that were already stricken by Your  
13 Honor.

14 So, the suggestion that we have somehow  
15 not been diligent with respect to exhibits that  
16 have been stricken, I suggest to Your Honor is  
17 not fair.

18 THE COURT: Were they stricken because  
19 they were late-filed, was that the reason?

20 MR. SCAROLA: Yes. They were stricken  
21 because they were late-filed.

22 THE COURT: So now they're saying, Well,  
23 for whatever reason, and I've already gone  
24 through my own analysis relevant to the  
25 rationale of the case not going to trial, which

1 had nothing to do with the Edwards versus  
2 Epstein case, but a technicality dealing with  
3 the other matter regarding Epstein versus  
4 Rothstein, now they're saying, Well, you've had  
5 eight months to deal with them and you haven't  
6 dealt with them.

7 MR. SCAROLA: But we haven't had eight  
8 months to deal with them, sir, because they  
9 were stricken. And respectfully, I don't know  
10 how a burden can be imposed upon us to deal  
11 with stricken exhibits. What we are here  
12 addressing is a new attempt to have this Court  
13 revisit rulings that Your Honor previously  
14 made.

15 And the same arguments were made earlier.  
16 Look at the pretrial stipulation. They  
17 stipulated that we could use these exhibits.  
18 There's no prejudice. All of those arguments  
19 were addressed. And ultimately Your Honor  
20 struck all of those exhibits.

21 And there has been no delay on our part  
22 with regard to challenging the propriety of  
23 these late-added exhibits. We responded  
24 promptly, and they are the ones who are now  
25 calling up this motion, their motion to add

1 additional exhibits, they are calling it up  
2 32 days, 33 days before trial.

3 THE COURT: When did I enter that order  
4 relative to the disallowance of any further  
5 discovery without court order?

6 MR. VITALE: December.

7 MR. LINK: 2017, Your Honor.

8 THE COURT: December 2017?

9 MR. LINK: Yes, sir.

10 MR. VITALE: I think it was actually  
11 November 27th, Your Honor.

12 THE COURT: I just know it's somewhere in  
13 one of these books.

14 MR. LINK: Just for the record, while  
15 you're looking, Your Honor --

16 MR. SCAROLA: I'm sorry, but...

17 THE COURT: Mr. Scarola hasn't finished,  
18 and I'll give you five minutes to rebut.

19 MR. LINK: Thank you.

20 MR. SCAROLA: The last point that counsel  
21 makes, the last category of documents are  
22 documents --

23 MR. LINK: Your Honor, I have a copy of  
24 the order, if you want it.

25 THE COURT: Just give me the date. I

1 remember it.

2 MR. LINK: November 27th, sir.

3 THE COURT: November 27th, '17. Thank you  
4 very much. I appreciate that.

5 MR. LINK: You're welcome.

6 THE COURT: Thank you, Mr. Vitale, as  
7 well.

8 Go ahead, Mr. Scarola.

9 MR. SCAROLA: -- are documents that relate  
10 to Brad Edwards' claim for damages.

11 Brad Edwards' claim for damages was in the  
12 malicious prosecution claim from the day that  
13 it was filed. Brad Edwards' claim for  
14 emotional distress arising out of the malicious  
15 prosecution has been in this case since day  
16 one. There simply cannot be a viable argument  
17 based upon some suggestion that they're just  
18 now realizing they need to defend against the  
19 mental anguish claim. That's just silly.

20 It has been in this case since day one,  
21 and we ought not 30 days before trial to be  
22 placed in a position where we must deal with  
23 exhibits allegedly relating to that claim for  
24 damages that has been in this case for many,  
25 many years.

1           This simply, again, is another  
2           circumstance where Jeffrey Epstein's current  
3           counsel takes issue with the quality or  
4           quantity of the work done by Jeffrey Epstein's  
5           privately retained prior counsel.

6           That's an issue between Jeffrey Epstein  
7           and his privately retained prior counsel. It  
8           is not an issue with which either we or this  
9           Court should be obliged to deal on the eve of  
10          this very, very, very long-delayed trial.

11          So, those, Your Honor, are the general  
12          arguments that I wanted to make in response to  
13          the points that were made by opposing counsel.  
14          I have provided Your Honor with an outline with  
15          regard to Binger. I would adopt all of the  
16          positions that are stated in that outline  
17          without having to repeat them for Your Honor.

18          I think they're there, and as I said, I'm  
19          confident that Your Honor is well aware of not  
20          only what Binger stands for, but what Binger  
21          doesn't stand for, and that is that inquiry  
22          stops with the issue of prejudice.

23          Although even if it did, even if it did,  
24          there's absolutely no question about the fact  
25          that we would be dramatically prejudiced if the

1 door were to be opened to all of these new  
2 exhibits at this point in time for all of the  
3 reasons that I've previously stated.

4 Thank you, sir.

5 THE COURT: All right. Mr. Link, I  
6 promised you five minutes, and it is --

7 MR. LINK: I'm on the clock, sir.

8 THE COURT: -- 12:32, and you'll have  
9 until 12:37.

10 MR. LINK: Yes, sir.

11 First, just so the record is clear, the  
12 public documents that we talked about, the  
13 public records were delivered on a flash drive  
14 in February, so they have had the actual public  
15 records since February of 2018, Your Honor.

16 Second, you probably recall that this  
17 motion was noticed for two days to be heard in  
18 July, and by agreement of the parties we pulled  
19 this particular motion off the Court's calendar  
20 that we argued, so that we could attend  
21 mediation, and we did that. So it was by  
22 agreement that the motion was not heard back in  
23 July, Your Honor.

24 Third, Mr. Scarola wants to argue about  
25 this freeze in time at the time the complaint

1 is filed. And back in, I think it was December  
2 of last year, I said to this Court, those very  
3 words, that we should be looking only at what  
4 is known to everybody from the date the  
5 complaint was filed backward.

6 Mr. Scarola stood up and said, No, sir, we  
7 are also challenging the continuation of the  
8 lawsuit.

9 You can't have it both ways, Judge. You  
10 can't say that the defendant is precluded from  
11 talking about anything going forward after they  
12 filed the suit, but the plaintiff can. All the  
13 defendant can do is talk about what existed  
14 before the suit was filed.

15 So, we have to have a meeting of the minds  
16 here. Are we talking only about the original  
17 filing? If that's the case, then nothing,  
18 frankly, we're talking about would ever come  
19 into evidence. It's only if we're going to  
20 focus on the allegations in the complaint,  
21 which is what this Court ruled, and  
22 Mr. Scarola's assertion that he wants to  
23 prosecute the continuation aspect of the  
24 malicious prosecution.

25 If we're going to have the continuation

1 aspect of the malicious prosecution, you can't  
2 tie the defendants' hands and say, You may only  
3 talk about information and evidence that was  
4 known before the lawsuit was filed. If that's  
5 the case, why would we ever be entitled to take  
6 discovery? This would be the only case I know  
7 in the civil arena where we wouldn't -- we  
8 wouldn't have taken any discovery. We could  
9 have tried this case on day one.

10 But there was a lot of discovery taken,  
11 none of these exhibits create prejudice,  
12 they've known about them for months, they're in  
13 the public record, they're emails from  
14 Mr. Edwards himself and, Your Honor, Binger  
15 teaches us this: Yes, you have discretion.  
16 But the discretion is really driven by, as you  
17 said, process and fairness, and is there really  
18 a prejudice?

19 And my client is offering every solution,  
20 if there is any prejudice, which we don't  
21 believe exists, every solution to that  
22 prejudice from opening up discovery, to  
23 extending deadlines, to moving the trial, to  
24 whatever it takes to eliminate the prejudice,  
25 as Binger suggests.

1 Thank you, Judge.

2 THE COURT: Thank you very much, both  
3 sides. I very much appreciate your spirited  
4 and well-informed arguments.

5 Let me start by saying by agreeing to the  
6 delay, for whatever purpose, and it was a noble  
7 purpose, that being a good-faith attempt to  
8 mediate this case and have it resolved. And  
9 according to Florida law, and probably  
10 consistent throughout the United States,  
11 settlements are favored by the law, and  
12 certainly that rationale, I appreciate it.

13 But by making that agreement, both sides  
14 placed themselves in some peril relative to  
15 bringing this case before the Court  
16 approximately a month prior to the case  
17 proceeding for trial. The case will not be  
18 moved from the trial docket and will proceed  
19 short of resolution of the case in its  
20 entirety, that being the Epstein -- the Edwards  
21 versus Epstein case in its entirety, since  
22 that's the only thing that is being tried at  
23 that time.

24 The intent of the November 27, 2017 order  
25 barring any further discovery absent court

1 order was, albeit short, carefully and  
2 lengthily contemplated by this Court so as to  
3 be able to viably try a 2009 case without any  
4 further delay. That time frame is extremely  
5 important, and one that I believe should be and  
6 remain frozen in time.

7 The Court recognized in December of 2017,  
8 shortly thereafter, that because of the number  
9 of pretrial motions that needed to be dealt  
10 with, and there were banker boxes full of  
11 motions and accompanying exhibits that led the  
12 Court to that conclusion, and albeit with  
13 significant reluctance, I moved the case from  
14 December to March.

15 The order relative to the discovery, to my  
16 knowledge, that being the November 27, 2017  
17 order, never was further amended. Or it never  
18 was amended since there was no interim there,  
19 that I'm aware of.

20 There may have been some discovery that  
21 was permitted, including the deposition of  
22 Mr. Edwards, but the reason why I brought the  
23 issue of Mr. Edwards' deposition up that was  
24 taken in December, '17, and the fact that he  
25 wasn't provided with those documents was not an

1 issue of strategy. It was solely an issue of  
2 contemplation now and bringing it back a year  
3 ago, that if those materials were not on a  
4 witness list, on an attorney exhibit list, it  
5 would have furthered the frustration of the  
6 Court relative to the requirement of initial  
7 discovery having -- or strike that -- of  
8 additional discovery having to be done, and  
9 that could have been largely taken care of by  
10 virtue of the fact that Mr. Edwards was  
11 provided with those documents so he would be  
12 able to prepare and that no ultimate prejudice  
13 would be done.

14 What has been demonstrated here today is  
15 that it appears from my review of these  
16 late-filed exhibits, that most, if not all, of  
17 the proposed late-added exhibits were available  
18 to Mr. Epstein or his counsel before Mr. Link  
19 and Ms. Rockenbach. And they were available  
20 either before the previously scheduled  
21 December 17th trial date, or the date set  
22 earlier this year in March of 2018.

23 I've heard enough.

24 MR. LINK: I just wanted to make a  
25 clarification on a date, I apologize.

1 THE COURT: Sure.

2 MR. LINK: Mr. Edwards' deposition was  
3 taken November 10th, before the witness list  
4 was exchanged.

5 THE COURT: Okay. Well, November 10th is  
6 still close enough, and I recognize now that's  
7 fine that the deposition was in November and  
8 December, it would have been before the order  
9 relative to the no further discovery was  
10 entered. But that's a very, very minor point  
11 in terms of the Court's overall evaluation of  
12 the matter.

13 But getting back to what I was saying, as  
14 it relates to the trial set earlier this year  
15 in March of 2018, but for the technical issue  
16 that was raised, and but for the fact that the  
17 case was stayed by the Fourth District Court of  
18 Appeal despite the Court's setting of separate  
19 trials, despite the fact that there was no  
20 impediment to going forward on the Edwards  
21 versus Epstein malicious prosecution case,  
22 despite all of the reasons why the Court gave  
23 that, in essence, this was really not a  
24 counterclaim at all but for the nomenclature  
25 used.

1           It was a separate action, and at least by  
2           implication the Fourth District Court of Appeal  
3           recognized the separateness of the action by  
4           indicating that the point was moot on appeal  
5           because the Edwards case was reset for trial.  
6           The case didn't go because they decided to stay  
7           it, which again, is their prerogative, I take  
8           no issue with that. But it was what it was.

9           The point I'm making, though, is but for  
10          that hypertechnicality, the case would have  
11          gone to trial on the Edwards versus Epstein  
12          case. And that same captured time, that being  
13          the November 27th order disallowing any further  
14          discovery other than by court order where the  
15          Court contemplated that there could be some  
16          information that was derived as time went on  
17          that would be new and that would constitute the  
18          ability to proceed with that newly discovered  
19          information, that was the impetus behind that  
20          court order.

21          But it was firm, and it was without  
22          equivocation as to the Court's rationale and  
23          reasoning that it has gone -- this case has  
24          gone on too long, and that the information that  
25          was necessary to go forward was or should have

1           been known to both sides and their respective  
2           counsel, whether that counsel was representing  
3           Mr. Edwards in 2009, in 2010, all the way up to  
4           his present attorneys, Mr. Link and  
5           Ms. Rockenbach.

6                     And weren't we told that somebody was  
7           going to shadow their representation? Are they  
8           still shadowing?

9                     MR. LINK: Not for over a year.

10                    MR. SCAROLA: Yes. We were told that.

11                    THE COURT: Well, I didn't want to get  
12           them confused.

13                    MR. LINK: We brought out the sun and  
14           eliminated the shadow. Actually, is that  
15           reversed?

16                             (Thereupon, a discussion was held off  
17           the record.)

18                    THE COURT: But the point that I'm making  
19           is the reason why the case didn't go to trial  
20           in March was not that the separate claim  
21           brought by Mr. Edwards against Mr. Epstein was  
22           not at issue, and we would have been ready and  
23           we would have gone forward. It was not because  
24           that November 27th order has never been, to my  
25           knowledge, it was not to suggest that the

1 floodgates were going to open, and I probably  
2 used that term earlier in the discussion that  
3 culminated in the November 27th execution of  
4 the order. It was not to open the floodgates  
5 further, because there was no need to.

6 I agree with the position taken by  
7 Mr. Edwards that if this Court was to wholesale  
8 permit hundreds of newly added exhibits and,  
9 again, I emphasize that either party should be  
10 penalized for their agreement to hold off,  
11 because that was an agreement and I never get  
12 involved -- I shouldn't say never -- rarely get  
13 involved, unless they affect the docket. I  
14 rarely get involved with agreements of counsel  
15 to put this off until now, approximately a  
16 month before going forward on an extensive  
17 trial, that this Court has put aside time, has  
18 refused the request of others to utilize that  
19 time, and we will not again take this off  
20 without a complete and full settlement of the  
21 Edwards versus Epstein claim.

22 And I find that there would be extensive  
23 discovery required if the Court was to allow  
24 these exhibits to be added at this late  
25 juncture. And I am not going to delay, and

1           this extensive discovery suggestion was, in  
2           fact, at least impliedly conceded by  
3           Mr. Epstein's counsel today by indicating that  
4           they had no objection to the case being put off  
5           for 30 to 60 days.

6           Again, I'm not going to do that, I'm not  
7           going to violate an order that I put in place a  
8           year ago relative to not permitting discovery  
9           absent a court order. In effect, by allowing  
10          these late exhibits, it would violate the  
11          Court's own November 27th, 2017 order, because  
12          by its very definition, that being allowing  
13          these exhibits, it would open discovery again,  
14          as at least impliedly conceded by Mr. Epstein's  
15          counsel.

16          I further agree with Mr. Edwards'  
17          attorneys, to the extent that any proposed new  
18          strategy, or at least, again, impliedly,  
19          concerning the work that was done by  
20          Mr. Epstein's prior counsel in not listing any  
21          of these exhibits should not and will not guide  
22          this Court's ruling or any rulings that have  
23          been made.

24          I am permitting Numbers 367 and 368.  
25          Those being the -- what I perceived to be

1        screenshots of Mr. Edwards' law firm's website,  
2        the Edwards Pottinger website printout of  
3        Mr. Edwards, and the Edwards Pottinger printout  
4        reached a jury verdict. I'm not suggesting  
5        that I'm going to admit those into evidence,  
6        only that I'm going to find that because of  
7        their recency, and because it deals with  
8        Mr. Edwards' damages, at least in part, and  
9        that these were captured subsequent to  
10       Mr. Edwards' deposition, but back in January,  
11       it would be a matter of presumably public  
12       information and, therefore, I do not find  
13       prejudice specifically as it relates to those  
14       two exhibits.

15                Again, it is without prejudice, however,  
16       to any objections that may be made concerning  
17       the substantive aspects of the proposed  
18       admission. Likewise, I haven't yet dealt  
19       squarely with these other 47 emails and how  
20       they impact upon the Court. I am unsure. So  
21       I'm not going to delve into those today.

22                But as far as all of the remaining  
23       late-filed exhibits, they will be stricken  
24       pursuant to the reasons that I have given at  
25       length today, and the rationale that I have

1 announced.

2 So, I thank you all very much. I'd ask  
3 that an order be prepared in conjunction with  
4 the rulings that I've made.

5 I've been clear, so I don't expect there  
6 to be competing rulings here as I -- or  
7 competing orders as I've received in many of  
8 the instances in the past. I am warning both  
9 sides that if I receive competing orders and I  
10 have to take the time to go through those  
11 competing orders after I've already announced  
12 clearly, unequivocally and lengthily the  
13 rationale behind my rulings, that it will be a  
14 loser pay situation where I will award  
15 attorney's fees and costs as a sanction if I  
16 find that there is an unmeritorious  
17 disagreement with a proposed order. The order  
18 should be prepared by the movant, that being  
19 Mr. Epstein's counsel, with review by  
20 Mr. Edwards' counsel. And I expect any  
21 difficulties to be worked out before I receive  
22 competing orders.

23 And if I do receive competing orders, as I  
24 said before, the only way I have in dealing  
25 with 1,600 open files is to take a rather hard

1           stance on this so as to protect the time and  
2           devotion that this Court can give, which is  
3           only so many hours per week both here in the  
4           courtroom and at home, and that is week after  
5           week after week, unless it's during vacation  
6           time, which I'm still subject to phone calls  
7           and emergencies in many cases.

8           MR. SCAROLA: Your Honor, with regard to  
9           the 47 emails, the privileged documents that  
10          are in contention, I have a copy of the  
11          bankruptcy hearing transcript, as well as the  
12          declarations that constituted the direct  
13          testimony considered by Judge Ray.

14          Is that something that Your Honor would  
15          like?

16          THE COURT: Yes, I would. I'll take a  
17          look at that.

18          Is that okay with you, Mr. Link and  
19          Ms. Rockenbach?

20          MR. LINK: Absolutely.

21          I was going to ask for some assistance,  
22          Your Honor. Would you like us to get time to  
23          get in front of you? I understand you haven't  
24          decided whether you want to conduct an in  
25          camera inspection. If the Court decides it

1 wants to conduct an in camera inspection, I  
2 would suggest that the protocol that was agreed  
3 to by the parties back in 2010 would make  
4 sense, which is that you would have the 47  
5 exhibits and Mr. Scarola and I would present  
6 our views about those 47 exhibits before the  
7 Court. And we know that -- I think we know  
8 that we won't have a bankruptcy ruling before  
9 at least November 13th, which is when the  
10 proposed orders will be submitted by Fowler  
11 White and Mr. Edwards.

12 Do you want us to get in front of you  
13 before? What can we do to help Your Honor?

14 THE COURT: All right. Well, let me  
15 understand a couple of things, because you-all  
16 are living with the case and, again, this is  
17 but one of many for me. These 47 emails, at  
18 the very least, have been timely listed or not  
19 timely listed?

20 MR. SCAROLA: No, Your Honor, have not.

21 MR. VITALE: They were struck as part of  
22 the 700-plus exhibits that Your Honor struck on  
23 March 8th.

24 MR. SCAROLA: But these were late-listed  
25 exhibits, but these have a separate issue,

1           which is the privilege.

2           THE COURT: I'll give you a minute. So  
3 they are not part of what was comprised in  
4 this -- in this grouping, and I -- for the  
5 record, I'm referring to what I've just ruled  
6 on.

7           MR. LINK: They're not. And the reason,  
8 you asked me earlier about the 47, and I  
9 thought there was more of a Binger analysis  
10 with the 47. Because they were not discovered  
11 by anybody until we reviewed the disk. So that  
12 they were not sitting, you know, being used by  
13 somebody in a strategic decision not to use  
14 them. So I think the late discovery is an  
15 issue as to those 47, which is different than  
16 the exhibits that you addressed today.

17           THE COURT: So these 47, though, were part  
18 of the initial discovery requests and response  
19 because if I'm understanding what you said  
20 earlier, in 2010 and they were --

21           MR. LINK: Yes, sir.

22           MR. SCAROLA: Listed on the privilege log.

23           THE COURT: -- listed as privileged.

24           MR. SCAROLA: Listed on a privilege log  
25 and no ruling was ever made in response to any

1 defense challenge to that privilege log.

2 MR. LINK: That's correct.

3 MR. SCAROLA: And while -- well, I don't  
4 want to get too deep into these arguments.

5 THE COURT: Let's not get too deep into  
6 them, because I think that they do have a bit  
7 of a different connotation and import as it  
8 relates to whether or not late-filed, because  
9 if they were contained in the 2010 privilege  
10 log, it's very difficult to suggest that there  
11 would be prejudice as to knowledge on the part  
12 of those documents being potentially utilized.  
13 So, what I would like you to do then is --  
14 we're getting dangerously close on time --

15 MR. VITALE: Your Honor, just a  
16 clarification for the record.

17 Along with the disk, there was a folder  
18 containing 32 hard copies of materials that  
19 Fowler White printed from the disk.

20 If my memory serves me correctly, 22 of  
21 those documents were listed on Mr. Edwards'  
22 privilege log, one of them had handwritten  
23 notations. So in terms of the discovery issue,  
24 I just wanted the record to reflect that hard  
25 copies were, in fact, in possession of

1 Mr. Edwards' attorneys.

2 THE COURT: Okay. All of that I'll take  
3 into consideration at one time. But I  
4 appreciate you bringing that to my attention,  
5 Mr. Vitale. But I think, you know, obviously  
6 we have to deal with this sooner rather than  
7 later.

8 I'll check what's going on, I know that --  
9 I think I told you, the week of November 11th  
10 I'm going to be pretty much away or otherwise  
11 unavailable. I have the 13th, 14th and 15th  
12 that I'll be at this conference speaking as  
13 part of the judicial panel in New Orleans for  
14 those three days. Monday is a holiday, that  
15 being the 12th. The 16th I've indicated to you  
16 that I have six hours of nonjury trial in three  
17 different cases. And then we have the  
18 Thanksgiving holiday where I'm going to be on  
19 vacation.

20 So what I'm going to ask you to do is  
21 this. I would suspect that this is pretty much  
22 teed up and that you-all know essentially what  
23 your respective positions are going to be. So,  
24 what I'd like you to do, Mr. Link, is have  
25 your -- I presume it's going to be your motion?

1 MR. LINK: It is.

2 THE COURT: No, I don't know what you're  
3 going to call it, but whatever your motion is,  
4 to be filed and briefed by next Friday.

5 MR. LINK: A week from today?

6 THE COURT: Yes, sir.

7 MR. LINK: Yes, sir. No problem.

8 THE COURT: And then, Mr. Scarola, your  
9 response will be due to me by the following  
10 Friday.

11 MR. SCAROLA: Yes, sir.

12 MR. LINK: Would it be helpful, Your  
13 Honor, if we did it assuming Judge Ray rules  
14 one way and assuming Judge Ray rules the other  
15 way for you to consider? Does that help you?

16 THE COURT: That's fine. You know,  
17 whatever you think is best. I'm not going to  
18 harness you there. I just want them as brief  
19 as possible, please.

20 MR. LINK: Yes, sir.

21 THE COURT: Because what I'm going to do  
22 then is during the vacation week, even though  
23 I'm hopeful to be away for at least a few of  
24 those days, I have to be back on Wednesday for  
25 a medical procedure on the 21st, so I'm going

1 to be back in town at least by the 21st.

2 MR. LINK: Okay.

3 THE COURT: Okay? So if you get those to  
4 me by the 16th, I'll have that weekend, and  
5 then -- I'm not going to take it with me on my  
6 vacation time, away from the family. But I'll  
7 have it also during the following weekend, and  
8 then I'll make some time available for you  
9 during the week of the 25th, even though --  
10 I'll show you my calender, if you care to look  
11 at it.

12 MR. LINK: We know it's full.

13 THE COURT: It doesn't look particularly  
14 good.

15 MR. LINK: Your Honor, for purposes of  
16 making the argument, may we refer to the 47  
17 exhibits? They're under seal, so I want to be  
18 careful what we do.

19 THE COURT: Well, that's a good question.

20 MR. SCAROLA: I think it's a question  
21 that's easily answered, Your Honor, and that is  
22 that this must be dealt with the way any  
23 privileged issue is dealt with. You don't get  
24 to argue from the contents of the documents.  
25 Because you're not supposed to have the

1 documents unless and until the Court decides  
2 that they should be released. It is not  
3 appropriate for counsel to be making arguments  
4 based upon the content of the documents.

5 MR. LINK: The only reason I disagree, and  
6 I would agree with that proposition, is that  
7 the parties contemplated turning the documents  
8 over, work product documents, to Mr. Epstein's  
9 lawyer so they would both have a set to argue  
10 to Magistrate Carney. The issue with these 47,  
11 that Mr. Scarola has said they're  
12 attorney-client privilege documents. If they  
13 are attorney-client privilege, then they should  
14 not have been turned over.

15 We have other reasons for waiver, such as  
16 the crime fraud and they were provided to an  
17 adversary.

18 THE COURT: And remind me, Magistrate  
19 Carney, was he involved in the bankruptcy or  
20 was he involved in something else?

21 MR. LINK: He was involved in -- he was  
22 appointed by Judge Ray.

23 THE COURT: As a magistrate in the  
24 bankruptcy --

25 MR. LINK: As a special master, I should

1 say. Not a magistrate, special master.

2 MR. SCAROLA: After which Judge Crow made  
3 it very clear that he would be ruling on issues  
4 of privilege with regard to any privilege  
5 assertions in a case in which the subpoena was  
6 issued over which he was presiding. So Judge  
7 Carney never made --

8 MR. LINK: We don't disagree, Judge  
9 Hafele.

10 MR. SCAROLA: Judge Carney never made any  
11 privilege --

12 THE COURT: No, I'm not suggesting he did.  
13 That wasn't really my intent at all. And even  
14 if he did, I don't think that it would be any  
15 way, shape or form binding here.

16 MR. LINK: We agree you're the person.

17 THE COURT: So what I will need is the  
18 emails sent to my office under seal. I will be  
19 the only one to review those emails.

20 What I then would need from you is the  
21 motion that's filed, and I don't know how there  
22 can be a viable discussion without discussing  
23 the contents of the emails in a setting that  
24 the memoranda is sent under seal, and for  
25 attorneys' eyes only.

1 MR. SCAROLA: Respectfully, Your Honor,  
2 that's what happens in every circumstance where  
3 there is a privilege assertion. We file a  
4 privilege log --

5 THE COURT: I just don't have these things  
6 come up that often where the sensitivity is  
7 such that it is of significant concern. So,  
8 usually the parties are able to hammer out  
9 agreement on these things and we -- and I go  
10 with whatever the agreement is.

11 MR. SCAROLA: Well, the agreement usually  
12 is if there's going to be an in camera  
13 inspection, the documents are handed over to  
14 the Court for in camera inspection, they never  
15 go to opposing counsel; to quote a man of great  
16 wisdom, you don't want the fox guarding the  
17 henhouse. You don't want to send the man in to  
18 repair the stucco in the dressing room and tell  
19 him "Don't peek." They're not supposed to see  
20 these things. They're just not supposed to see  
21 them.

22 MR. LINK: Except that Mr. Edwards agreed  
23 that that was the process --

24 MR. SCAROLA: Respectfully, that's not the  
25 case. There were a group of

1 attorneys'-eyes-only documents that were handed  
2 over that do not include the documents that are  
3 listed on the privilege log. And that's what  
4 we're talking about here. We're talking about  
5 privileged documents. The fact that they  
6 obtained those documents improperly does not  
7 give them any greater right, if anything it  
8 gives them a lesser right, to challenge, at  
9 this point, the assertion of privilege.

10 THE COURT: Well, that may be. That may  
11 be fine for legal argument, but I want to get  
12 to the practical aspects of trying to -- for my  
13 own purpose, be able to adequately review the  
14 legal arguments in connection with the emails  
15 at issue. And at least from the attorneys'  
16 standpoint, and Mr. Epstein's standpoint, as I  
17 understand it, the cat is out of the bag in  
18 that regard. So, I can't undo what's already  
19 been done, and that's been years ago.

20 MR. SCAROLA: So we don't want to  
21 aggravate the problem.

22 THE COURT: And I agree. That's why I'm  
23 saying that I think the best approach would be  
24 for a motion to be filed of a generic quality  
25 that does not mention any contents of these

1 emails, but simply tees it up, so to speak,  
2 with the understanding on this record today  
3 that any substantive discussion of those emails  
4 will be done under seal by way of memorandum,  
5 and that will be done under seal and will  
6 continue to be under seal, and will be filed  
7 under seal in case of a need for appellate  
8 review.

9 So that is going to be the direction of  
10 the Court, that the motion be filed, but that  
11 the memorandum be sent under seal to this  
12 Court, hand-delivered to me, sealed. And the  
13 same response memorandum be sent to me under  
14 seal by Mr. Edwards' counsel a week later.

15 MR. LINK: And shared with each other,  
16 though?

17 THE COURT: Absolutely, for attorneys'  
18 eyes only.

19 MR. LINK: Understood.

20 THE COURT: Okay? And Mr. Edwards, I  
21 understand, is co-counsel, so he has the right  
22 to look at them. But it's not to be  
23 distributed to anyone else --

24 MR. LINK: Understand. It's very clear.

25 THE COURT: -- until I issue an order of

1 court, okay?

2 MR. LINK: Thank you.

3 MS. ROCKENBACH: Thank you, Your Honor.

4 THE COURT: And that will relate to that,  
5 as well.

6 I have to go. I do have another  
7 appointment that I have, that I'm already late  
8 for.

9 MR. SCAROLA: Your Honor, this is the  
10 bankruptcy materials.

11 THE COURT: Thank you. And thank you so  
12 much to our court reporter and to our deputy  
13 for kindly remaining through the lunch hour.

14 Have a very pleasant weekend and thank you  
15 again for your respective arguments.

16 We'll be in recess.

17 THE COURT REPORTER: Thank you, Judge.

18 (Thereupon, the hearing was concluded  
19 at 1:06 p.m.)  
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COURT CERTIFICATE

STATE OF FLORIDA        )  
                                  : SS  
COUNTY OF PALM BEACH )

I, LINDA P. AUKAMP, RPR, 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 6th day of November, 2018.

\_\_\_\_\_  
LINDA P. AUKAMP, RPR