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1 IN THE CIRCUIT COURT OF THE 15TH JUDICIAL CIRCUIT IN
2 AND FOR PALM BEACH COUNTY, FLORIDA

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4

[REDACTED],

5

Plaintiff,

6

vs.

Case No. 502008CA028058
XXXXMB AD

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JEFFREY EPSTEIN,

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Defendant.

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PROCEEDINGS BEFORE THE  
HONORABLE JUDGE DONALD W. HAFELE

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July 31, 2009  
8:30 a.m. - 9:05 a.m.

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205 N. Dixie Highway  
West Palm Beach, FL 33401

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[REDACTED], court reporter

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APPEARANCES OF COUNSEL

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1 Proceedings in the Matter of [REDACTED] vs. JEFFREY EPSTEIN.  
2 July 31, 2009 8:30

3 THE COURT: Good morning, gentlemen.  
4 We're here this morning on the Plaintiff's  
5 motions to add punitive damages. Who will be  
6 arguing on behalf of the Plaintiff?

7 MR. EDWARDS: Brad Edwards, Your Honor.

8 THE COURT: Alright, Mr. Edwards.

9 MR. EDWARDS: Do I need to go to the  
10 podium or is right here fine?

11 THE COURT: Whichever you prefer.

12 MR. EDWARDS: Your Honor, with our motion  
13 we filed - and, I believe, Your Honor has it -  
14 the discovery that was submitted to Mr. Epstein,  
15 which consists of Requests for Admissions,  
16 Requests for Production, Interrogatories, as  
17 well as Interrogatory responses under oath by my  
18 client.

19 THE COURT: Do you have any cases that  
20 speak to the presumption relative to the  
21 Defendant exercising his Fifth and Sixth  
22 Amendment rights during the deposition testimony  
23 and/or during any other discovery?

24 MR. EDWARDS: Sure, Your Honor.

25 THE COURT: I know that Mr. Critton in his

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1 reply memorandum indicated some conflict in  
2 terms of the nature of the discussions of the  
3 appellate courts relative to that issue.

4 MR. EDWARDS: May I approach?

5 THE COURT: Thank you.

6 MR. EDWARDS: I'm going to present the  
7 case of Fraser vs. Security and Investment out  
8 of the Fourth DCA.

9 The pertinent part, it says: "Our  
10 conclusion is consistent with the prevailing  
11 rule that the Fifth Amendment does not forbid  
12 adverse inferences against parties to civil  
13 actions when they refuse to testify in response  
14 to probative evidence offered against them: the  
15 amendment 'does not preclude the inference where  
16 the privilege is claimed by a party to a civil  
17 cause.'"

18 It skips down and says: "Such a rule is  
19 both logical and utilitarian. A party may not  
20 trample upon the rights of others and then  
21 escape the consequences by invoking a  
22 constitutional privilege - at least not in a  
23 civil setting."

24 The final paragraph on that page says:  
25 "Nor are we persuaded that the fact of

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1 invocation of the privilege is irrelevant and  
2 immaterial." "In the case" -- Sorry, "Mr.  
3 Justice Brandeis... observed that 'Silence is  
4 often evidence of the most persuasive  
5 character.'"

6 Clearly, this case, out of our district  
7 court, is an indication that adverse inferences  
8 may be drawn.

9 Right now we are at a punitive damages  
10 stage. We are not at a stage where we are  
11 talking about the admissibility of evidence. We  
12 are --

13 THE COURT: Speaking only of a proffer to  
14 establish punitive damages as required under  
15 768.721, correct?

16 MR. EDWARDS: Exactly, and I was going to,  
17 for the record, read that part of 768.721: "In  
18 a civil action, there is a" --

19 THE COURT: I think we can skip that.

20 MR. EDWARDS: Okay.

21 THE COURT: The statute speaks for itself  
22 and it's a part of the record today, so why  
23 don't you go ahead and proceed?

24 MR. EDWARDS: The reasonable showing, by  
25 way of proffer, that there is an intentional

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1 misconduct or gross negligence on behalf of the  
2 Defendant.

3 Intentional misconduct is defined as "the  
4 Defendant had actual knowledge of the wrong  
5 permissible conduct and the high probability  
6 that injury or damage to the claimant would  
7 result and, despite that knowledge,  
8 intentionally pursued that course of conduct  
9 resulting in injury or damage."

10 In this case, we have intentional  
11 misconduct of the worse kind. This is a case  
12 that has been presented to the public through  
13 public relations people for the Defendant at  
14 times as [REDACTED]

15 [REDACTED]  
16 [REDACTED] and that's not  
17 the case at all.

18 What the evidence is really going to show  
19 is that Mr. Epstein - at least dating back as  
20 far as our investigation and resources have  
21 permitted, back to 1997 or '98 - has every  
22 single day of his life, made an attempt to  
23 sexually abuse children.

24 We're not talking about five, we're not  
25 talking about 20, we're not talking about 100,

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1 we're not talking about 400, which, I believe,  
2 is the number known to law enforcement, we are  
3 talking about thousands of children, and it is  
4 through a very intricate and complicated system  
5 that he devised where he has as many as 20  
6 people working underneath him that he is paying  
7 well to schedule these appointments, to locate  
8 these girls.

9 He particularly goes after a very  
10 vulnerable and impressionable age group that --

11 THE COURT: To use the quotation, "the  
12 evidence will show the Defendant sought out  
13 underprivileged and economically disadvantaged  
14 minor females," and later go on to say,  
15 "influenced them away from the typical  
16 adolescent lifestyle as a result of his  
17 allegedly criminal acts."

18 MR. EDWARDS: And that is exactly what  
19 he's done. The age group begins as young as  
20 12 years old and as old as 16 years old. There  
21 will be evidence that at 16 years old, many of  
22 the girls are told, "You're getting too old for  
23 me."

24 He very clearly targets this specific age  
25 group and has a method to this; that is, "Get

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1 the girls inside the house and I will do the  
2 rest," and he creates this God-like aura for  
3 these girls and --

4 THE COURT: Let's talk about - pardon me  
5 for interrupting you - let's talk about the  
6 precise claims that are being made here. You're  
7 dealing with [REDACTED] and [REDACTED]. - they're pseudonyms  
8 for purposes of this litigation. Why don't we  
9 speak to those two individuals at this juncture  
10 and how the punitive damage proffer is  
11 sufficient or insufficient relative to them  
12 individually, please?

13 I understand the global allegations and I  
14 understand the allegedly wide scale situation  
15 that you're suggesting as you've alleged here,  
16 but I want to go now to the precise claims made  
17 by these two Plaintiffs who are in front of the  
18 Court today, and whether or not that proffer is  
19 sufficient to satisfy the case law, including  
20 the case that Mr. Critton cited, and that is:  
21 The Estate of Despaigne, D-E-S-P-A-I-N, vs. Avante  
22 Group, Inc., which is found at 900 So.2d. 637,  
23 and that was a Fifth District Court of Appeal  
24 case, decided in 2005.

25 MR. EDWARDS: Yes, Your Honor, and that is

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1 the case that states: "a 'proffer' according to  
2 traditional notions of the term, connotes merely  
3 an 'offer' of evidence and neither the term  
4 standing alone nor the statute itself calls for  
5 an adjudication of the underlying veracity...is  
6 merely a representation of what evidence the  
7 defendant proposes to present."

8 We can turn to the sworn Interrogatory  
9 answers, No. 8, wherein [REDACTED] and, similarly,  
10 [REDACTED], in slightly different words, states: "I  
11 was touched, battered, and fondled by Defendant  
12 Jeffrey Epstein during the incidents described  
13 in the complaint. I observed the Defendant  
14 touch and fondle himself. I observed the  
15 Defendant ejaculate numerous times. I was made  
16 to touch the Defendant. I also observed sexual  
17 acts and had sexual acts perpetrated on me by  
18 Defendant Jeffrey Epstein. At various times I  
19 was unclothed, as was the Defendant and others.  
20 At all times material, I was a child under the  
21 age of 18 years old. The Defendant also used me  
22 to bring him other minor girls and he controlled  
23 and brainwashed me" --

24 THE COURT: Just a second.

25 (Telephone interruption.)

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1 MR. EDWARDS: -- "and brainwashed me into  
2 believing this lifestyle was healthy and normal  
3 for a girl my age. I was a victim of various  
4 criminal acts and sexual exploitation. I was  
5 induced and coerced by Defendant into acts of  
6 prostitution."

7 While we're on the coercion and  
8 prostitution, there is a specific --

9 THE COURT: Before you move on, that's

10 [REDACTED]. 's --

11 MR. EDWARDS: Yes, Your Honor.

12 THE COURT: -- Answer to Interrogatories?  
13 Why don't you read into the record [REDACTED] Answer  
14 to Interrogatories so the record is clear?

15 MR. EDWARDS: I apologize, Your Honor.

16 THE COURT: Take your time.

17 MR. EDWARDS: Answer to Interrogatory No.  
18 8 for [REDACTED] indicates: "My injuries are  
19 emotional and psychological and are the direct  
20 result of Defendant Jeffrey Epstein's actions.  
21 I was touched, battered, and fondled by the  
22 Defendant during the incidents described in the  
23 complaints. I observed the Defendant touch and  
24 fondle himself. I observed the Defendant  
25 ejaculate numerous times. I was made to touch

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1 the Defendant. I also observed sexual acts and  
2 had sexual acts perpetrated on me and was forced  
3 to perform on me, including oral sex and other  
4 activities. At various times I was unclothed,  
5 as was Defendant and others. At all times  
6 material, I was a child under the age of  
7 18 years. I was a victim of various criminal  
8 acts and sexual exploitation. I was induced and  
9 coerced by the Defendant into acts of  
10 prostitution."

11 THE COURT: Thank you. You were going to  
12 speak to a legal point --

13 MR. EDWARDS: Right.

14 THE COURT: -- before I asked you to read  
15 into the record those Interrogatory answers. Go  
16 ahead.

17 MR. EDWARDS: Where we left off was the  
18 coercion into prostitution. What makes these  
19 crimes so egregious is the fact that these girls  
20 that we're talking about were all beginning  
21 their grooming process with Mr. Epstein when  
22 they're 14 and 15 and 16 years old.

23 There is a specific statute, which we have  
24 filed, and a cause of action under our  
25 complaint, that is under 796.09, Coercion, civil

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1 cause of action.

2 Reading 796.09, Paragraph 1: "A person  
3 has a cause of action for compensatory and  
4 punitive damages" - this is in the statute -  
5 "against a person who coerced them into  
6 prostitution," and it goes on to define what  
7 coercion means, and it is exactly what happened  
8 in this case.

9 This statute allows for punitive damages  
10 on a statutory level irrespective of the age of  
11 the person that is coerced into prostitution.

12 THE COURT: And the coercion that you're  
13 talking about are the alleged acts as between  
14 these two Plaintiffs and Mr. Epstein as opposed  
15 to, I think, there's something in one of the  
16 Interrogatories that suggests that there may  
17 have been prostitution that followed, at least  
18 one of the Plaintiff's, involvement with Mr.  
19 Epstein, but you're speaking solely about the  
20 prostitution issues as it concerns the  
21 Plaintiffs here and Epstein; is that accurate?

22 MR. EDWARDS: I believe, if I understand  
23 what you are saying, I mean, in terms of  
24 damages, if one of the Plaintiffs - and I can  
25 represent - if one of the Plaintiffs was led

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1 into a life of prostitution after being  
2 indoctrinated into this deviant lifestyle at an  
3 early age by Mr. Epstein - she was not a  
4 prostitute prior to that - and I relate that  
5 similar to kids of that age being brought over  
6 to somebody's house that is as powerful and  
7 wealthy as him and he has, let's say, cocaine on  
8 the table, and they do that for three years.  
9 They think it's fun at the time, but after that  
10 they have this addiction that continues on.  
11 This is something similar to what happened to  
12 one of the clients.

13 But, yes, the coercion into prostitution  
14 is something that on a statutory level already  
15 allows for punitive damages, and that's  
16 irrespective of the age.

17 THE COURT: Again, I'm trying to  
18 understand the factual basis. There's  
19 allegations that Mr. Epstein paid these young  
20 ladies \$200 to massage him and then subsequent  
21 thereto, there was some type of alleged sexual  
22 activity. Are you speaking to that specifically  
23 when you're talking about the statutory remedy  
24 or are you speaking about something distinct  
25 from that?

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1 MR. EDWARDS: No, that's specifically what  
2 I am talking about --

3 THE COURT: Okay.

4 MR. EDWARDS: -- Mr. Epstein paying them  
5 and using their age, their economic - their lack  
6 of wealth - the fact that these are poor,  
7 disadvantaged children with very little parental  
8 guidance to his advantage to induce them into  
9 acts of prostitution.

10 THE COURT: I'll give you two minutes to  
11 wrap up, please.

12 MR. EDWARDS: Okay.

13 Your Honor, while I know that we are  
14 focusing on [REDACTED] and [REDACTED], there are certain  
15 defenses that have been made such as, "The girls  
16 were" - "we didn't know that they were over 18,  
17 otherwise we wouldn't have done this," where we  
18 are going to be able to show there are hundreds  
19 and hundreds and hundreds of girls and none of  
20 them were over the age of 18.

21 Many of these girls, including my clients,  
22 told him that they were under the age of 18 and  
23 he continued to do this misconduct, which is  
24 exactly what the statute or what the punitive  
25 damages statute speaks to when it talks about

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1 intentional misconduct and/or gross negligence.  
2 I think the record is very clear at this  
3 point, especially after this proffer, that if  
4 any case is deservant of punitive damages being  
5 added, it's this one.

6 THE COURT: Alright. Thank you. I'll  
7 give you a couple minutes to wrap up after Mr.  
8 Critton finishes his argument.

9 MR. EDWARDS: Thank you, Your Honor.

10 THE COURT: Thank you.

11 MR. CRITTON: May it please the Court. As  
12 the Court knows, I represent Mr. Epstein in this  
13 matter.

14 Your Honor, a couple of things to start -  
15 the case that Mr. Edwards cites deals with  
16 inferences, deals with inferences at trial time  
17 as distinct from inferences that, I believe, are  
18 sufficient to carry the day, so-to-speak, in the  
19 absence of other evidence with Mr. Epstein's  
20 claim of Fifth Amendment privilege. As well, we  
21 cited to the court cases - and I'll get to in  
22 just a minute - that specifically address that  
23 issue.

24 Secondly, we're not here on - and I think  
25 the Court, I think, I kind of at least got the

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1 drift is we're not here on other claims - we're  
2 here on [REDACTED] and [REDACTED]'s claim today to add  
3 punitive damages and, in fact, "Do they meet the  
4 standard under the applicable statute in this  
5 instance?"

6 What I think is the most striking part  
7 about this - and while I believe that the  
8 evidence may be - their perception, the  
9 Plaintiffs' perception of the evidence - may be  
10 different than ourselves, but I think the  
11 evidence in this case will show, at least [REDACTED].  
12 and [REDACTED], were prostitutes before they ever met  
13 Mr. Epstein, they remain prostitutes, and they  
14 are still prostitutes today.

15 THE COURT: But is my role today one of  
16 weighing the evidence or one of determining  
17 whether or not there's a sufficient record in  
18 order to allow a punitive damage claim to stand?

19 I mean, in one of the cases, I believe -  
20 it's the case of State of Wisconsin Investment  
21 Board vs. Plantation Square Associates, that's  
22 found at 761 F.Supp 1569 - Judge Hugler  
23 (phonetic) of the federal court provided an  
24 excellent discussion of the distinction between  
25 the proofs necessary to sustain a claim for

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1 punitive damages even at summary judgment, much  
2 less a trial, and compared that with the  
3 relatively lighter burden of simply making a  
4 proffer of record evidence to support a claim  
5 for punitive damages.

6 MR. CRITTON: Right.

7 THE COURT: Aren't we at that stage; that  
8 is, the latter stage right now?

9 MR. CRITTON: Yes, and I very well  
10 understand the distinction and, I believe, I  
11 understand what the Court's role is in this  
12 particular instance in making that  
13 determination.

14 A couple of the issues though, in  
15 particular - with a camera here today, for some  
16 unknown reason, showing up at this hearing - is  
17 there were references to drugs, alcohol, other  
18 instances that are not applicable to this case.  
19 There's no pleadings on that particular issue,  
20 and I'm concerned about that, is that there's an  
21 attempt to jack this up in the media, as I said,  
22 with the camera here today, for no other  
23 hearing. It's ridiculous under the  
24 circumstances, and to make all of these wild  
25 allegations against Mr. Epstein for which there

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1 is absolutely no evidentiary proof nor was that  
2 submitted here in support of their proffer, I  
3 did want to address at that.

4 So let me get to the heart of the issue.  
5 I think the most distinguishing part of this  
6 particular case that's different; that is, [REDACTED].  
7 and [REDACTED], is the fact that [REDACTED]. gave a sworn  
8 statement to the FBI in this instance.

9 Again, there's a strong distinction. She  
10 gave a sworn statement back in '05 or in '06.  
11 She had - [REDACTED]. did - she had an attorney, Mr.  
12 Eisenberg, it was before she had a civil lawyer  
13 who's seeking millions of dollars under these  
14 circumstances, and the testimony of [REDACTED]. at that  
15 time was very significant and it flies directly  
16 in the face of her "sworn testimony" or her  
17 "sworn interrogatories."

18 The Court had Mr. Edwards read in [REDACTED]. 's  
19 answer and [REDACTED] answer to their  
20 Interrogatories as to what allegedly occurred  
21 with Mr. Epstein and, "Oh, surprise," they were  
22 almost verbatim, word for word, as to what  
23 allegedly happened.

24 But at the time of her sworn statement to  
25 the FBI, [REDACTED]. said on 4/24/07 - again, it was an

1 FBI agent and a U.S. attorney that was there at  
2 the time - and she talked about going over to  
3 Mr. Epstein's house. She said, "I had a fake  
4 ID." She was told to make certain that she was  
5 18. She told Mr. Epstein she was 18, and she  
6 said it was her understanding that all of the  
7 other girls that she brought for this horrific  
8 experience - she continued to bring other girls  
9 and go herself on a number of occasions.

10 She said that she, herself -- On Page 8,  
11 it asks, "Did she ever call you?" - and I assume  
12 that was someone else - and she goes, "No. I  
13 gave Jeffrey my number and, I said, you know, if  
14 you want me to give you a massage again,  
15 basically I'm more than anxious to come."

16 On Page 9, [REDACTED] says, "I willingly took" -  
17 "so I willingly, the first time, took off my top  
18 when I gave him the massage and nothing more  
19 than that."

20 She goes on to say in her testimony at  
21 Page 10, her sworn statement, "I said, I told  
22 Jeffrey, 'I heard that you like massages  
23 topless.'"

24 "And he said 'Like, yeah.' He said, 'But  
25 you don't have to do anything that you don't

1 feel comfortable with.'"

2 "And I said, 'Okay,' but I willingly took  
3 it off" - this is [REDACTED] at the time. This is her  
4 sworn testimony.

5 At Page 17, the police officer or the FBI  
6 agent says, "and when he turned over then did he  
7 touch you at all or was he just" -- Her answer  
8 was, "No, I did not touch him, he did not touch  
9 me. He didn't even want..." and I assume to  
10 "touch you."

11 She goes on to say, "He didn't want me to  
12 touch him and he didn't touch me."

13 She goes on and on in this statement,  
14 [REDACTED] in the statement and she says, "We had  
15 fun."

16 "It was positive," on Page 18.

17 On Page 19, "You know, I would wear  
18 panties. Willingly one time, because we were  
19 making jokes and everything, and willingly one  
20 time, I had, yes, I was totally nude, but I was  
21 fine with that."

22 She talks about within the statement the  
23 other girls that she brought over. Again, she's  
24 testified or she gives the Interrogatory answer  
25 that this was outrageous to her, but, yet she

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1 brought other girls to experience this. She  
2 says - now that she has a civil lawyer seeking  
3 money damages - now "it's a bad experience."  
4 Now all of a sudden, "He touched me, he did  
5 these things to me."

6 She references - at least, on Page 29 of  
7 the statement, Judge - there's a [REDACTED] that's  
8 referenced. [REDACTED] I would represent to be [REDACTED] in  
9 the [REDACTED] complaint, and I think we established  
10 that when Mr. Berger and I were arguing a prior  
11 motion to you. So she talks about [REDACTED] on Page  
12 29.

13 That's when she starts saying, she says,  
14 - "she," meaning [REDACTED]

15 [REDACTED]  
16 Then on Page 30, "How old was [REDACTED]  
17 "She was 17."

18 Alright, so you have 12, 13, 14, 15, 16.  
19 You have [REDACTED]. saying [REDACTED] was 17 at the time.

20 "And what happened when [REDACTED] came over?"

21 She said the same thing, "She went a few  
22 times."

23 On Page 31, [REDACTED]. testified under oath to  
24 the FBI and the United States attorney, "None of  
25 my girls ever had a problem. And they'd call

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1 me. They begged me, you know, for us to go to  
2 Jeffrey's house because they loved Jeffrey.  
3 Jeffrey is a respectful man, he really is. I  
4 mean, he all thought we were of age, always,  
5 that's what's so sad about it."

6 And she goes on, Page 36, and the FBI says  
7 to her, "Now, when you were working for him, you  
8 were going over to Jeffrey's house to give him  
9 massages, did you have a boyfriend?"

10 "Yeah."

11 "And how did your boyfriend feel about  
12 it?"

13 "He was" -- [REDACTED]. says, "He was a jealous  
14 little boy, but he didn't care, 'Bring home the  
15 bacon,'" and the statement goes on and on, Your  
16 Honor. I know you've had an opportunity read it  
17 before and I reference again today.

18 There's clearly a distinction conflict  
19 between [REDACTED], now that she has a civil lawyer  
20 and she wants money, versus at the time that she  
21 didn't want money and she gave a statement under  
22 oath to the FBI and the United States attorney's  
23 office.

24 I recognize the Court's role in this. I  
25 recognize the standard. I recognize that both

1       ■■■■. and ■■■■ in their Answers to  
2 Interrogatories have made all sorts of, what we  
3 believe in part, are baseless or in large part  
4 baseless allegations, but we also have sworn  
5 testimony of ■■■■. on this instance.

6       We don't have it of ■■■■, but we have ■■■■.  
7 testifying about her own experience under oath:  
8 That it was positive; that he never used force,  
9 that she willingly did a number of times  
10 including giving topless massages; that Mr.  
11 Epstein never touched her; that she never  
12 touched him inappropriately, all she did was  
13 basically give him massages; that ■■■■, in this  
14 instance, as well as all the other girls that  
15 she took, she spoke with them afterwards, they  
16 begged to go back to Mr. Epstein's home, and  
17 none of them, not one of them ever complained.

18       So there's a large chasm between what is  
19 now being asserted in Answers to Interrogatories  
20 and mere allegations in the complaint between  
21 what the sworn testimony, at least ■■■■., was  
22 under the circumstances, as it relates to  
23 herself and what she was told by ■■■■ and other  
24 girls.

25       Thank you, Your Honor.

1 THE COURT: Thank you.

2 Mr. Edwards, I'll give you a couple  
3 minutes here.

4 MR. EDWARDS: Your Honor, I want to  
5 address the statement that was made by [REDACTED] to  
6 the FBI and how that even came about. This is a  
7 girl who, at the time of the statement, was  
8 fairly unaware of the investigation against Mr.  
9 Epstein, who is now, as we know, a convicted sex  
10 offender.

11 An attorney showed up to her house, paid  
12 for by Mr. Epstein, to represent her despite -  
13 and told her that, "For your role, you could  
14 possibly be implicated in some wrongdoing."

15 MR. CRITTON: Your Honor, just --

16 MR. EDWARDS: He represent --

17 MR. CRITTON: -- note my objection. This  
18 is complete hearsay here. He was aware of what  
19 was filed. He didn't file any affidavits for  
20 his client in opposition. I would object to any  
21 of this.

22 THE COURT: Alright. I don't want to get  
23 into any of the details. I don't think it's  
24 necessary at this juncture, which probably leads  
25 me to my question to you; that is: Is the

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1 weighing of evidence appropriate at this  
2 juncture?

3 MR. EDWARDS: No, Your Honor, I don't  
4 believe that's the standard at this stage  
5 anyway, and I don't think that Mr. Critton  
6 believes that either.

7 Just so the record's clear, we had nothing  
8 to do with the video camera being here, although  
9 that was implied. I don't know who did. I  
10 don't know if it was Mr. Critton, but it wasn't  
11 me.

12 THE COURT: Dan is always welcome here.

13 MR. EDWARDS: It's perfectly fine, but I  
14 don't like that being on the record, that it  
15 looks like I did it when I didn't.

16 THE COURT: I understand. We have a  
17 record here. The official record is being taken  
18 down by our fine court reporter, so.

19 MR. EDWARDS: Either way, sounds like what  
20 we just heard, that the reason that punitive  
21 should not be allowed here is because these  
22 14-year-old girls did this willingly.

23 We know that they're 14 years old, Mr.  
24 Critton knows they were 14, 15 year olds. There  
25 were message pads and scheduling books in

1 Epstein's possession indicating the dates, which  
2 would show how old those girls were, and that's  
3 evidence that will be presented in this case.

4 There are serious statutes to protect  
5 these kids from this kind of conduct, and these  
6 second and third degree felonies were committed  
7 repeatedly against them, and this is a case  
8 where, at least in a civil case, punitive  
9 damages are warranted, Your Honor.

10 Thank you, Your Honor.

11 THE COURT: Thank you both. I'm going to  
12 grant the motion. In conformance with and  
13 following the Despain case, the Court indicates,  
14 in following the analysis of Judge Hugler - and,  
15 by the way, that analysis of Judge Hugler is  
16 commented upon on a supportive basis by several  
17 appellate courts - and in the Despain case under  
18 headnote 7 and 8 on Page 642 it states: "a  
19 'proffer' according to traditional notions of  
20 the term, connotes merely an 'offer' of evidence  
21 and neither the term standing alone nor the  
22 statute itself calls for an adjudication of the  
23 underlying veracity of that which is submitted,  
24 much less for countervailing evidentiary  
25 submissions."

1           The Court finds that, while I appreciate  
2 Mr. Critton's argument and while I appreciate  
3 his submission, that essentially at this stage,  
4 respectfully, he is, at this point, presenting  
5 countervailing evidentiary submissions.

6           The Court further goes on in paraphrasing  
7 and then directly quoting Judge Hugler:

8       "Therefore a proffer is merely a representation  
9 of what evidence the defendant proposes to  
10 present and is not actual evidence." Actually,  
11 that's a quote from Grim vs. State, 841 So.2d.  
12 455, 462, and that, I believe, is a Florida  
13 Supreme Court case, even though the citation  
14 itself is not complete.

15           It goes on to say importantly - and that  
16 is in the Despain case - "A reasonable showing  
17 by evidence in the record would typically  
18 include depositions, interrogatories, and  
19 requests for admissions that have been filed  
20 with the court. Hence, an evidentiary hearing  
21 where witnesses testify and evidence is offered  
22 and scrutinized under the pertinent evidentiary  
23 rules, as in a trial, is neither contemplated  
24 nor mandated by the statute in order to  
25 determine whether a reasonable basis has been

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1 established to plead punitive damages," and I'll  
2 admit this citation from the Fifth District  
3 Court of Appeal, but, again, that is cited in  
4 Despain.

5 Likewise, in Strasser vs. Yalamanchi, 677  
6 So.2d. 22, which is a Florida Fourth District  
7 Court of Appeal case from 1996, which is one of  
8 the paradigm cases on the proffering of punitive  
9 damage evidence, that states that "there was  
10 reasonable basis for recovery of punitive  
11 damages" can be demonstrated by either a  
12 presentation of supporting evidence already in  
13 the record or by a proffer of the evidence to  
14 come.

15 I find that a combination of the Answers  
16 to Interrogatories - I will take into account,  
17 though, give little weight to the Fifth  
18 Amendment arguments of Plaintiffs - but  
19 certainly the Answers to Interrogatories on  
20 behalf of both of these individual Plaintiffs in  
21 this Court's view, and particularly in  
22 conjunction with the Coercion statute relative  
23 to prostitution, 796.09, would form a reasonable  
24 basis to establish at least a claim for punitive  
25 damages, recognizing that, again, the courts

1 have made clear that the proffer and the burden  
2 on the moving party is much less than at summary  
3 judgment or at trial, so I will allow the  
4 amendments to proceed and, therefore, we do have  
5 an amended complaint, so how much time will you  
6 need, Mr. Critton, to respond?

7 MR. CRITTON: I just wrote to Mr. Berger  
8 20 days I would like for both of them, if that's  
9 agreeable with the Court.

10 THE COURT: Fine with me, as long as it's  
11 fine with the Plaintiffs.

12 MR. BERGER: Yes, Your Honor. I drafted  
13 an order and just showed it to Mr. Critton. It  
14 just says: "Granted for reasons stated on the  
15 record. Plaintiff may file an amended complaint  
16 to allege a count for battery" - which is also  
17 part of our motion, which was unopposed - "and  
18 punitive damages. The defense shall have 20  
19 days to respond."

20 THE COURT: I believe you already filed  
21 the proposed amended complaint.

22 MR. EDWARDS: Yes, Your Honor. I filed it  
23 with the motion.

24 MR. BERGER: I'll correct that.

25 THE COURT: You can indicate in there --

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1 MR. CRITTON: Deemed filed.

2 THE COURT: -- "the amended complaint  
3 shall be deemed filed as of the date of this  
4 order from today."

5 MR. BERGER: We'll draft it out there and  
6 present it to the bailiff.

7 THE COURT: Not a problem. Thank you very  
8 much. Gentlemen, thank you for your arguments  
9 and your submissions and have a good rest of the  
10 week.

11 MR. CRITTON: If they get it typed I'll  
12 take a copy.

13 (The hearing concluded at 9:05 a.m.)  
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CERTIFICATE

STATE OF FLORIDA )  
COUNTY OF BROWARD )

I, [REDACTED], Shorthand  
Reporter, certify that I was authorized to and did  
stenographically report the foregoing proceedings and  
that the transcript is a true and complete record of  
my stenographic notes.

Dated this 5th day of August, 2009.

[REDACTED],  
COURT REPORTER