UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------x

JANE DOE 43,

Plaintiff,

v.

JEFFREY EPSTEIN, et al.,

Defendants.

----------x

New York, N.Y.

17 Civ. 0616(JGK)

November 7, 2018
4:00 p.m.

Before:

HON. SARAH NETBURN,

Magistrate Judge

APPEARANCES (via speakerphone)

BOIES, SCHILLER & FLEXNER LLP
Attorneys for Plaintiff
BY: SIGRID S. McCAWLEY
- and -
PAUL G. CASSELL
Attorney for Plaintiff

LINK & ROCKENBACH, P.C.
Attorneys for Defendants
Jeffrey Epstein, Sarah Kellen and
Lesley Groff
BY: SCOTT J. LINK

HADDON, MORGAN AND FOREMAN, P.C.
Attorneys for Defendant Ghislain Maxwell
Haddon, Morgan & Foreman, P.C.
BY: LAURA A. MENNINGER

(In chambers; speakerphone call initiated)

THE COURT: Good afternoon. This is Judge Netburn. I have you here with my law clerk and with a court reporter.

What I'm going to ask is that each party state its appearance for the record, and then if I can request that whenever anybody speaks, that that person identify themself again so that the court reporter can properly attribute your comments to the correct person. And then last housekeeping matter is that when I do these telephone conference, I do them as a courtesy to the parties. Obviously, you can't read body language over the phone, so please be considerate of one another and do your very best not to speak over somebody who is speaking.

So, who is here on behalf of the plaintiff?

MS. McCAWLEY: Good afternoon, your Honor. This is Sigrid McCawley, from the law firm of Boies, Schiller & Flexner, and I represent the plaintiff Sarah Ransome, and I have on the line with me as well Paul Cassell, who is our co-counsel who also represents plaintiff, Ms. Ransome.

THE COURT: Thank you.

MR. CASSELL: Good afternoon, your Honor.

THE COURT: Good afternoon.

And on behalf of Mr. Epstein and others?

MR. LINK: Good afternoon, your Honor. This is Scott Link on behalf of defendants Epstein, Kellen and Groff, and we

really appreciate your time this afternoon. Thank you.

MS. MENNINGER: Good afternoon, your Honor. Laura Menninger on behalf of defendant Ghislain Maxwell.

THE COURT: Thank you.

All right. So I have a series of letters from the parties regarding the dispute over the confidentiality order. My understanding is that the parties agree in principle to a confidentiality order but we have some disputes over its scope.

Having reviewed the two versions that were filed yesterday, I believe the primary disputes are on paragraph 3, where the definition of what is confidential is being negotiated, and then with respect to paragraph 8, about who is the qualified designating party. And then in the plaintiff's proposal there is a paragraph 13, regarding what to do with respect to electronic information that is sought by subpoena from a nonparty.

Are those the three areas in dispute at this point?

MS. MENNINGER: Your Honor, this is Laura Menninger for Ms. Maxwell.

There also is a dispute in paragraph 12 that relates to the paragraph 13, that is whether electronic copies could be -- after the conclusion of the case.

THE COURT: Sorry. You cut out for a minute. Whether electronic copies?

MS. MENNINGER: Could be maintained after the

conclusion of the case.

THE COURT: OK. I see what you are referring to.

All right. So let's begin with paragraph 3, which is the definition of "confidential." And as I understand it, defendant Maxwell seeks a definition that would encompass information that is, quote, confidential, and implicates common law and statutory privacy interests. Whereas the designation from the plaintiff is, in my opinion, more broad, which just requires a good faith basis to believe that the material is entitled to confidential treatment.

So the plaintiff here seems to be advocating for a more broad definition of confidentiality. I think the problem with that is should there be a dispute that I need to resolve as to whether something is appropriate or not, I think the way it is written in paragraph 3 would require me to evaluate whether or not the designating party had a good faith basis and potentially even their own subjective view. And to the extent there is an objective test that is implicit here, I'm not quite sure what I would be weighing that against. So I'm not -- I'm a little concerned that paragraph 3 is so broad.

That said, I think -- you know, I guess I'm curious to hear what the nature of the conversations have been on this particular topic to get a sense of where the real concerns lie.

MS. McCAWLEY: Your Honor, this is Sigrid McCawley for the plaintiff. If I could just address that briefly?

The one -- with respect to paragraph 3, the one thing that is also different between the version that we proposed and the version that Ms. Maxwell proposed which relates to paragraph 3 is in the beginning, the opening paragraph of Ms. Maxwell's protective order, you will see additional language that is not in our protective order, and that is the sentence that says, "Upon" -- at the very beginning of the protective order, "Upon a showing of good cause in support of the entry of a protective order to protect the discovery and dissemination of confidential information or information which will improperly annoy, embarrass, or oppress any party, witness, or person providing discovery in this case, it is so ordered." That language is not included in our introductory paragraph.

We have in our proposal order, "Upon a showing of good cause in support of the entry of a protective order to protect the discovery and dissemination of confidential information in this case, it is so ordered," because in our view that language allows the defendants to mark in a broad manner information as confidential that may not have -- they may not have a good faith basis for asserting confidentiality.

THE COURT: Can we pull back the lens for a minute?

What are the types of documents that we are talking about here that the parties have concern over?

MS. McCAWLEY: This is Sigrid McCawley again for the

plaintiff.

Your Honor, we started this conversation by in this case not proposing a protective order; it is the defendants who wanted the protective order. We agreed to it in good faith in order to try to move discovery along in this case.

My understanding is the types of -- you know, I see this as a sexual trafficking case, and the types of information that will be exchanged may have information of a sexual nature. However, unlike prior cases that we have had that have dealt with minors, the plaintiff in this case was not a minor at the time she was trafficked. So we were -- we believe that we did not need a protective order in this case as an initial matter. The defendants would like a protective order in this matter.

THE COURT: So maybe, Ms. Menninger, you can tell me what it is that you believe you are -- what is motivating you here? What are you worried about producing that you want to keep confidential?

MS. MENNINGER: Your Honor, I believe that the majority of the concerns will be related to discussions during depositions about sexual activities. Plaintiff has alleged not only that my client ran a sex trafficking organization but she claims also that she was directed by my client and the Epstein defendants to have sex with third parties, including Alan Dershowitz, for example. And so to the extent my client or Mr. Dershowitz or anyone else is going to be asked about their

private sexual activity, I believe that would implicate their privacy rights for the reasons that Judge Sweet articulated in the opinion that I had referenced in my moving letter. He analyzed it largely on the basis of sexual activity -- or sexual conduct being encompassed within a right of privacy -- a broad right of privacy and that people who will be in pretrial litigation have a right of some type around their private affairs, to include sexual activity.

I will say that plaintiffs have requested things like tax returns. They've requested credit card statements. They've requested photographs. They requested all kinds of materials relating to my client's personal life. The requests range from the years 1997 through today.

So to sort of -- I think in my view there is a mechanism within the protective order that should the other parties disagree with the designation of confidentiality, to raise that concern, and then if the parties still can't agree, to bring it to the Court's attention. I think, in my view, that's the more cost-effective and efficient way to go about this rather than a third party who get involved or a witness who is called to testify, having to raise it individually themselves in a motion to quash or a motion for a protective order.

I think it is not just documents that we're talking about but based on my experience in the Giuffre v. Maxwell

matter, it largely came up during the course of deposition testimony. There were also medical records that were being sought, psychiatric records being sought and I anticipate that would occur in this case as well.

THE COURT: Make sure that everybody is speaking as slowly and as clearly as possible so that the court reporter can be sure to get everybody's statement.

I guess my concern here is -- I think that this goes for both paragraphs, both paragraph 3's, that when the dispute comes up, I need to have a standard against which I can measure an application. And so, in my opinion, it is more effective if we can have some more detail. And so if the parties are prepared to agree to deem confidential, for instance, you know, information that relates to, you know, sexual conduct or sexual activity, you know, information that discloses personal identifying information, which would cover tax returns, information that discloses medical records, you know, and then, if necessary, there can be some sort of a catchall, but at least then I think that will save disputes in the first instance, and if there are disputes, it will give me some sense of what is intended here.

(Pause)

MS. McCAWLEY: Your Honor, this is Sigrid McCawley for the plaintiff.

The concern I have with the broadbrush of sexual

activity is that the case we brought is obviously for violation under the Sexual Trafficking Act, so it would encompass essentially everything that's going to transpire in the case. And while that -- there may be a way to modify that, for example, sexual activity as it relates to minors or something in that regard if we are going to have a witness who was abused by, or allegedly abused by the defendants when they were underage, I will be willing to talk about something like that would cover or protect from that issue. But to have a very broad definition of any sexual activity would -- you know, everything we would be filing would be almost entirely under seal, in my view.

THE COURT: Well, you know, your point is well taken that this is the topic of this case, and as a result, I think very little would be authorized to be filed under seal should it be relevant to an issue that the Court is going to decide. And so my -- you know, right now we're really talking about discovery and exchanging information, and I think it's reasonable for nonparties especially, but even parties, to, you know, to disclose information without a fear that it's going to be passed along to the New York Times. And so, you know, it may ultimately be covered by the press because it may ultimately be tried, or there may be motion practice where all of this is disclosed. But for the purposes of discovery, I'm less sympathetic to the argument that this case is about sexual

trafficking and therefore everything needs to be available to the public.

Is there a way that you think you can narrow the issue to accommodate your concerns?

MS. MENNINGER: Your Honor, this is Laura Menninger on behalf of Ms. Maxwell.

I am happy to draft a list of potential topics that I think are encompassed by the subject matter and circulate it. I don't have -- I agree with all of the ones your Honor suggested, and I would like to just take a look back at the discovery requests thus far and see if there are any additional discrete areas along with the language for a catchall that we could use as our measuring stick going forward.

THE COURT: What is your response to Ms. McCawley's general concern, and, therefore, what if we limited the sexual nature documents to those that concern nonparties?

MS. MENNINGER: Your Honor, I can only speak from the experience of the last case in which my client was asked by these same counsel about her consensual sexual adult relationships with others, including Mr. Epstein. So I don't think addressing -- we are only talking about minors or nonconsensual activities, those are the only things that are likely to come up. If they are not planning to ask questions about adult consensual relationships, then I probably would have less of a concern. But we actually had a couple rounds of

litigation before Judge Sweet in that case over whether my client had to answer questions regarding her adult consensual sexual activities, and ultimately, relying on the protective order, he ordered her to answer those questions.

So I'm -- I don't think that the distinction about whether it is a case involving alleged trafficking of minors or adults changes what I anticipate may be asked. I could be completely wrong and they don't plan to ask those same kind of questions in this case.

THE COURT: OK. Why don't I ask you, Ms. Menninger, to send a revised paragraph 3. I think the goal here is to be as specific as possible. And, again, because of the nature of this litigation, I think it's likely that much of the information that you seek to hold confidential for purposes of discovery would ultimately be disclosed certainly at a trial. Obviously, this protective order makes clear of that.

MS. MENNINGER: Right.

THE COURT: But even in the context of any motion practice, it may well be that the Court needs to rely on this information in order to render a decision, which would then make that confidential information a judicial document for which the public has a presumptive right of access. OK.

MS. MENNINGER: All right. Yes, your Honor. I am happy to do that.

This is Laura Menninger.

THE COURT: OK. So let's see what that is. I don't think that the proviso that the defendants have in their --

Sorry.

(Pause)

-- in the opening paragraph of the protective order that talks about annoyance, embarrassment, or oppression, I think that that should be removed, and so I would adopt the plaintiff's version of the sort of preliminary whereas clause for the protective order. But let's see if we can be more specific in paragraph 3 as to what it is that we are seeking to protect.

OK. Paragraph 8.

Paragraph 8, as I understand it, has to do with who has the right to designate something as confidential. And in my experience it has always been the producing party who has the obligation and the right to do so, but maybe in this case there are other concerns that I am not focusing on. Who wants to address this in the first instance?

MS. McCAWLEY: Your Honor, this is Sigrid McCawley. I am the one who proposed the language for paragraph 8.

The concern we had was from other actions -- Ms. Menninger has referenced the action before Judge Sweet, where one party would designate wholescale a nonparty, for example, all of their testimony confidential irrespective of whether the nonparty believes that it should be held

confidential. And so this paragraph, I adjusted it to provide --

THE COURT: Sorry. Ms. McCawley, you've got to speak half as fast.

MS. McCAWLEY: I'm so sorry.

THE COURT: We will never get a record here.

MS. McCAWLEY: I'm sorry.

So with this paragraph, I proposed to change the language such that only the person that is actually producing the confidential information, the one who owns that confidential information, would be able to designate it as confidential to protect from having a party wholescale designate things as confidential that weren't that individual's confidential information.

THE COURT: And your example is a nonparty gets deposed and then the defendant says everything in that nonparty's deposition should be confidential?

MS. McCAWLEY: Exactly.

THE COURT: Well, in part I would imagine that that would be -- we would have some limitations based on the revised paragraph 3 that will be more specific about what can and cannot be designated as confidential. And so, you know, I don't think testimony that, you know, one party believes is intended to annoy or to harass is an appropriate designation. But if that nonparty were speaking about something more narrow

and more particularized, how would you feel about that designation?

MS. McCAWLEY: Well, it can certainly be, for example, if that individual provided testimony with respect to something in this matter that they did not want to mark as confidential or, for example, produce photographs of the defendants with them that they did not want marked as confidential, under the old version of this protective order, the defendants could come in and mark it as confidential and the nonparty would have no control over that situation.

So this is meant to -- in other words, the party who is providing the information, whether it be by subpoena or whether it be a party to this agreement, has the ability to mark their information confidential if they want it to be protected in that manner, but no other person can do that other than the person who is producing the information.

THE COURT: OK. Ms. Menninger, that's certainly the most traditional way to proceed. What's the reason for not doing it that way?

(Pause)

MR. LINK: Your Honor, this Scott Link. Can I be heard on this for just a minute?

THE COURT: Sure.

MS. MENNINGER: I'm having some trouble hearing everyone.

MR. LINK: OK. This is Scott Link, your Honor. May I be heard on this --

THE COURT: Yes.

MR. LINK: -- topic for one moment?

THE COURT: Yes.

MR. LINK: So, first, I think it's unfair to expect a third-party witness, some of whom are not represented by lawyers, to have to make the decision about confidentiality.

Second, when a third-party witness comes in and gives testimony that relates to potential, for example, sexual activity with one of the defendants, then that defendant should have the right to designate that information as confidential. It's one thing to say that the defendant -- you know, that whoever the third-party witness is doesn't have an interest in maintain confidentiality, but that's really only half of the equation, because the person that they're testifying about may in fact want to keep that particular sexual relationship or consensual relationship from being in The New York Times, like you said.

So I think it just creates more of an issue for us if we leave it to an unrepresented person to control whether the confidentiality applies, particularly where you're going to give us a definition now in paragraph 3 that should be more limiting in what can be designated. And, frankly, if a party goes too far in the designation, then we'll be back before you,

and obviously you can do whatever you think is appropriate from the attorney's fees and costs and enforce the protective order that you've signed off on.

Thank you, your Honor.

THE COURT: Thank you.

MS. McCAWLEY: Your Honor, this is Sigrid McCawley again.

Just to address Mr. Link's comments in a reply from the plaintiff, exactly what he is saying is what we're trying to prevent, having to come back to you multiple times over something like this. So the party who is, for example, a nonparty witness who brings to a deposition photographs showing that witness with the defendant, those are that nonparty's photographs and they should be able to mark them as confidential and (unintelligible). So choose or not mark them as confidential, it is their material to designate. It shouldn't be that a party to the litigation can then coax that in confidentiality through this order. In other words, it creates more layers of dispute relating to confidentiality than is necessary.

THE COURT: I guess one question I have is, you know, what confidence do you have that a lay witness who comes to testify will have any understanding of the concept of confidentiality and any rights that he or she might be able to invoke to keep from the press his or her sexual activity? That

is question number one.

And question number two is, you know, with respect to the comment made by Mr. Link, which is that, you know, someone else may be implicated in a way that they wish not to be disclosed. You know, obviously, the nonparty is free to talk about their own experiences in whatever way they wish outside of the context of the litigation, but in the context of this litigation, if they are called upon to disclose information that might be I'll say confidential to a party, why shouldn't that party be able to protect his or her interests?

MS. McCAWLEY: This is Sigrid McCawley again.

So to address the first point, in this litigation thus far, we've only had obviously a few handful of depositions, and all of the nonparty deponents are represented by counsel. So this is not -- it is a hypothetical that we are posing, of course, but it is not a circumstance that has arisen in this case with respect to any nonparty witnesses.

On this second point of -- you made the point that they are free to disclose. Obviously, a nonparty is in control of their information if they want to disclose it, and that is why courts typically have the standard that everything is open and public. So we're going against that standard by folding in a situation where a party could designate some other individual's information as being confidential. So, it cuts against what the standard is for federal court disclosures

generally, and that individual has the right to disclose that if they so choose.

THE COURT: OK. All right. I think I'm going to take paragraph 8 under advisement and think a little bit, and I will issue an order later on as to how to proceed on that topic.

Let's --

MS. MENNINGER: Your Honor, this is Laura Menninger again. If I may just quickly, I want to correct one misstatement.

There were a number of -- there are a number of witnesses in this case who have been implicated by plaintiff and do not have counsel. I think there are something like 80 witnesses who have been endorsed. And certainly if plaintiff counsel believes that they -- each of those people have counsel, they have not shared that information with us. So I do actually believe this is quite a big concern that there will be people involved in the pretrial discovery process who do not have lawyers make the kind of assessment that paragraph 8 suggests they have a lawyer who would make it for them.

THE COURT: OK. OK. I appreciate that.

OK. Let's move to paragraph 12 and 13, which I think are connected.

Paragraph 12, as I understand it, the issue in dispute is with respect to the retention of electronic copies and a representation that they would be not distributed at the

conclusion of the litigation. And I take it that the defendants' concern is that that paragraph and paragraph -- that provision in paragraph 12 implies that electronic documents would be retained, and I presume that what you want is full destruction of those documents.

You know, in this day and age --

MS. MENNINGER: Your Honor, Laura Menninger.

THE COURT: Yes.

MS. MENNINGER: That is correct. In the last case we had that provision so that there would be destruction. Obviously, if the case goes to trial, anything that is aired publicly at the trial would not be destroyed. If there are motions practice where documents are legal documents and relied upon by the Court, they enjoy the protections of the matter. But I do -- it is our request that there not be material held indefinitely afterwards if they don't qualify under one of those exceptions (unintelligible) because the pretrial discovery process should not be used for ulterior purposes like gathering material in subsequent media, you know, participation, that shouldn't be the reason why these materials are (unintelligible) for purposes of use at trial or as judicial documents so that the matters can be resolved, as they should be, through the court system.

MS. McCAWLEY: Your Honor, this is Sigrid McCawley for the plaintiff.

And I proposed the language in 12, but Ms. Menninger, in response to that language, proposed paragraph 13. So that was what we were negotiating. I want to make clear, 13 is not my language. It was an accommodation with when I proposed 12.

And the reason why I proposed 12 is really more of a technical reason. It is in my view -- and I have limited IT experience, but in my view, the order that was -- is the prior order that we had talked about makes it -- makes you attest to the fact that you have destroyed all electronic information that has been marked as confidential. And as you know, in this electronic age, what happens is if you are filing, for example, pleadings under seal, those documents get attached as filings. Then they get moved by email to different individuals, circulated in drafts. They get sent to experts. They get moved electronically in a number of ways that in my view is virtually impossible as an attorney to attest that you have destroyed every single electronic -- you've extracted it from other filings, other pdfs, and destroyed every single piece of that confidential information, particularly when there are large-scale confidentiality designations in a case where things are -- the majority or the bulk of the information in the case is designated confidential such that anytime discovery is used in any manner, you would have to track down every single email or electronic version of that document and make sure you have destroyed it.

So this is really from my perspective as a practitioner, practically being able to say I have destroyed -- certifying I have destroyed everything I think is really an impossibility in that regard. So that is why I proposed the language, to attest that you've not destroyed it, you won't destroy it, you will hold on to it, and not do so without a court order, but I think it's virtually impossible to attest that you have been able to destroy it all.

THE COURT: Well, I think that's a reasonable concern given the technology. And I guess as to paragraph 13, my reaction was -- and I think maybe this is what gave the defendants some pause -- I mean, why can't paragraph 13 simply say that absent a court order, you know, that the party is not going to respond to a subpoena? You know, obviously notify the designating party that a subpoena has been served, but the protective order just prohibits you from responding. And you can tell the party that subpoenas you, sorry, I'm bound by a court order. You know, I can make an application to the Court for permission to respond, but absent a court order, I can't produce these documents. And in that way there will be no -- I think that will be a good protection for the defendants against some production of documents, whether electronic or otherwise, that may be still accessible to the plaintiffs after the litigation is over.

MS. McCAWLEY: Yes, your Honor. This is Sigrid

McCawley again.

I'm sorry, Laura.

I'm comfortable with that modification or any modification of paragraph 13 in that regard.

MS. MENNINGER: This is Laura Menninger on behalf of Ms. Maxwell.

My only small concern to the paragraph 13 suggestion is just to make sure we all are clear about what a court order means, because in some contexts, in some cases, subpoenas are viewed as court orders, and so I did not want a subpoena to be construed as having the same force and effect as an actual, you know, review and consideration by a judicial officer and then giving rise to a court order. So with the caveat that a court order really means that and it is not a subpoena, I don't have a problem with that aspect of paragraph 13.

Getting back to the issues that Ms. McCawley raised regarding, you know, the difficulty of complying with destroying electronic copies, I think as long as there were a certification that an attempt has been made to destroy electronic copies, recognizing that perhaps not every single one was caught, would then alleviate the defendants' concerns. My concern, I think as the Court understands, is that intentionally holding on to electronic copies and then participating in trying to get a court order to release those copies kind of undercuts the utility of the protective order in

a way that makes -- would potentially make witnesses and parties feel reluctant to provide information which they thought was going to live on forever in a lawyer's file regardless of whether it ultimately became public in a courtroom. And so, you know, I think there could be language maybe better crafted which said you make a good faith effort to destroy the electronic copy, you know, that that would alleviate the practicality concerns raised by Ms. McCawley but also give some comfort to parties or third-party witnesses who are understandably reluctant to have the limited categories of documents exist forever and also ensure that the litigation process is not being for ulterior purposes with regards to the media.

THE COURT: Well, I am -- I think we're on our way to finding a solution. Obviously, a good faith effort, the beauty is in the eye of the beholder. And Ms. McCawley raises the, you know, probable experience of lawyers during the course of the litigation e-mailing documents back and forth. Look at this. What do you think about this? Etc. Etc. And to comply with any good-faith obligation would -- you know, the lawyers need to then, you know, cull through their emails almost like an e-discovery search to find out -- to find documents. That seems a little bit much.

You know, maybe the -- you know, as long as they represent that they've destroyed their --

MR. LINK: This is Scott Link. Maybe it is my phone that is cutting out, but I'm only hearing a few words here and there for the last 20/30 seconds.

MS. MENNINGER: That is my problem, too. This is Laura Menninger.

I apologize, your Honor.

THE COURT: Well, we can try another phone call or we can have people come in.

(Pause)

MS. McCAWLEY: Your Honor, this is Sigrid McCawley.

I'm hearing fine. I think it is when -- I think if it is possible, you seem to get louder and a little quieter. I don't know if it is possible to get closer to where the microphone is at all so that Ms. Menninger and Mr. Link can hear better.

THE COURT: I'm happy to try. I haven't moved and I'm pretty close.

In any event, my concern is about what obligations would be on counsel of all sides, all parties, to sort of go through their email and other electronic file retention to destroy documents. And it seems perfectly reasonable to require a party to, for example, destroy an electronic file, so maybe the file set, but it seems less reasonable to require lawyers at the conclusion of this litigation to search through the thousands of internal emails and identify and delete those

emails that have a document attached to them. That seems burdensome and unnecessary.

You know, in my experience, and I take it that you all have had litigation experience between each other, but I find that lawyers often overlitigate protective orders for fear of nefarious conduct that very rarely comes to pass. And maybe you all have experience to know that that conduct may arise, but the parties are going to sign this protective order and they're going to agree to be bound by it and to keep in confidence the information that they receive, and they will be held in contempt if they fail to comply. And, you know, I'm not sure that any wordsmithing that we're going to do here with respect to the destruction of electronic documents is going to be that much more powerful than the fact that I will hold the party in contempt if they violate any of the terms of this protective order.

So I think, you know, requiring a party to destroy their electronic file maybe is reasonable, but I don't think it is reasonable to require them to comb through three years worth of emails to see whether or not there are any attachments that might be of confidential material, and that the party will agree that they won't produce any documents in response to a subpoena after -- you know, absent a court order from a competent jurisdiction.

It seems to me that should be that should be --

MS. MENNINGER: Your Honor, this is --

THE COURT: Go ahead.

MS. MENNINGER: Your Honor, this is Laura Menninger, for Ms. Maxwell.

I appreciate your comments and I understand where they are coming from. The other reason I had referenced Judge Sweet's opinion in the Giuffre matter is that in that opinion he talks about plaintiff's counsel supporting the protective order throughout the litigation of that matter and then afterwards, when the Miami Herald had an application to have access to the confidential information, that they reversed position and supported the Miami Herald's application so that the Miami Herald, who I now have been observing by their reporter as of yesterday, is writing a story about this -- about Ms. Giuffre's case and has introduced Ms. Giuffre. And her counsel have supported their application to have access to the confidential information after the conclusion of the case and after the (unintelligible).

So Judge Sweet ruled that -- he declined the invitation to do so in that opinion. I think that is -- while I do think that in most cases parties are concerned about things that never come to pass, in this particular case, I had to -- we have reason to be concerned that even though the protective order says what it says, should the case resolve afterwards, there may be a changed position by plaintiff's

counsel.

MS. McCAWLEY: Your Honor, this is Sigrid McCawley for the plaintiff.

That isn't accurate and it needs to stand corrected. If you look at the filings that we submitted, the Miami Herald was trying to get access to information under the protective order as well as other third parties. There are two appeals pending. We did not file any of those appeals. They are by other third parties who had access to the information. We said that if they are going to be accessing information, it has to be to all of the information, it cannot be to a selective portion of the confidential information. And that was the position that we took in that litigation. And Judge Sweet did not make any comment that Laura had just stated that he did. Those orders stand for themselves, as we read, by the Court.

THE COURT: OK. Well, again, I'm not quite sure we can account for all of the potential scenarios that the parties are contemplating or anticipating. I think we can revise paragraphs 12 and 13 to require the destruction of electronic files and that, you know, the commitment to keep in confidence all materials held that are designated confidential and the prohibition against disclosing any confidential materials absent an order from a court signed by a judge.

I understand that there is a deposition happening tomorrow and that there are documents that are to be turned

over today. I'm going to consider paragraph 8. I may not get you my thoughts before the day is over. The documents should be produced immediately, and they should be kept in confidence, and any protective order will apply to those documents. But for time being they are to be kept in confidence, and the deposition should be kept in confidence until the protective order is entered.

Are there any --

MS. MENNINGER: Your Honor, this is Laura Menninger.

I produced the documents yesterday under the confidentiality agreement. We'll keep it confidential as you just suggested, and I appreciate the comments about the deposition tomorrow.

THE COURT: OK. So I will turn to this last outstanding issue in the next day or two and give you my thoughts and then ask you to send me a revised protective order sometime next week.

Anything further from either side?

MR. LINK: Your Honor, this is Scott Link. Nothing for us, your Honor. Thank you.

MS. McCAWLEY: That is Sigrid McCawley.

Thank you, your Honor. We appreciate your time.

MS. MENNINGER: Thank you, your Honor. This is Laura Menninger.

THE COURT: All right. Thank you.

MR. CASSELL: Your Honor, this is Paul Cassell. Thank you as well.

THE COURT: Thank you.

(Adjourned)