

# EXHIBIT 3

## (File Under Seal)

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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

3 -----x  
4 VIRGINIA L. GIUFFRE, et al.,  
5 Plaintiffs

6 v. 15 Civ. 7433 (RWS)  
7 GHISLAINE MAXWELL, et al.,  
8 Defendants

9 -----x  
10 New York, N.Y.  
11 November 10, 2016  
12 12:30 p.m.

13 Before:

14 HON. ROBERT W. SWEET

15 District Judge

16 APPEARANCES  
17 S. J. QUINNEY COLLEGE OF LAW  
18 AT THE UNIVERSITY OF UTAH  
19 Attorney for Plaintiff Giuffre  
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23 Attorney for Defendant Maxwell  
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24 MARTIN G. WEINBERG PC  
25 Attorney for Respondent Epstein  
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26 ATTERBURY GOLDBERGER & WEISS PA  
27 Attorney for Respondent Epstein]  
JACK A. GOLDBERGER

28 DAVIS WRIGHT TREMAINE LLP  
29 Attorney for Non-Respondent Churcher  
ERIC J. FEDER

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1 (In open court)

2 THE COURT: OK. Where we were was to consider the  
3 Churcher request with respect to the opinion. Is there any  
4 problem with the opinion or the redacted opinion?

5 MR. CASSELL: Not from the plaintiff, your Honor.

6 MR. PAGLIUCA: I am leaving that completely up to you,  
7 your Honor.

8 THE COURT: Have you given me an order or how do we do  
9 this?

10 MR. FEDER: Your Honor, Eric Feder for non-party  
11 Sharon Churcher. We submitted on September 20, it's document  
12 number 440, an agreed notice of filing the redacted opinion,  
13 which attached a copy of the redacted opinion. So all we are  
14 asking is that the Court sort of issue it as its own docket  
15 entry that says opinion or memorandum and opinion, however the  
16 Court wants to denominate it, because if we wanted to cite it  
17 later, an exhibit would be hard for another court to swallow.

18 THE COURT: Your motion to publish the redacted  
19 opinion is granted, and I will file a docket entry to that  
20 effect.

21 MR. FEDER: Thanks, your Honor.

22 THE COURT: So that does that.

23 The testimony of Epstein.

24 MR. CASSELL: Your Honor, I think the matters we are  
25 getting into now are sealed matters, so I would move that the

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courtroom be closed at this point.

MR. WEINBERG: We agree, your Honor.

THE COURT: That's fine. You have to police the people who are present.

MR. CASSELL: I believe one attorney who is with Mr. Epstein, and there are several other persons here.

THE COURT: Well, obviously, Epstein is --

MR. CASSELL: Right, Epstein would be permitted, but there are several spectators here.

THE COURT: All right. Yes.

(The remainder of the hearing (pages 4-41) was sealed)

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1 || (The following was held in a sealed courtroom)

2 MR. CASSELL: Your Honor, we would move to compel the  
3 testimony of Epstein. I know you've read the pleadings. I  
4 could just highlight a couple of small matters for you.

5                   Paul Cassell for plaintiff, Virginia Giuffre. Our  
6 motion to compel breaks down into three very narrow pieces, as  
7 you know, from the pleadings. Let me highlight a couple of  
8 things that we think are foregone conclusions in the language  
9 of the case law.

10 Cell phone records. We've established, and, for  
11 example, in our reply brief, we have an exhibit that gives you  
12 not just general descriptions of phone records but very  
13 particular information about the phone records, even the ten  
14 digits that belong to the phone numbers. We've given you line  
15 one in Palm Beach County, line three in Palm Beach County.  
16 We've given you two phone numbers on Epstein's Gulfstream jet.  
17 We've given you two phone numbers on his 727.

18                   The existence of telephone records for those  
19 specifically identified numbers is a foregone conclusion. And  
20 with regard to authenticating them, obviously the phone company  
21 can authenticate those. So we haven't heard any argument that  
22 provides any basis for his refusal to produce those phone  
23 records. And, remember, it isn't my job to convince you. It's  
24 their job to convince you that they have a valid Fifth  
25 Amendment privilege to not answering what are obviously very

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1 valid discovery requests.

2 Similar points could be made -- and I know you've seen  
3 the briefing on bank records. Again, we've given you not just  
4 the theory that there are bank records. We've given you the  
5 bank. We've given you account numbers. Remember, the Palm  
6 Beach Police Department executed a search warrant and actually  
7 got some of the bank records. So, the idea that he can now  
8 assert a Fifth Amendment privilege over bank records that are  
9 in the hands of the government strikes us as, to put it mildly,  
10 farfetched.

11 We've also asked for production of photographs. And,  
12 there again, in our exhibits filed along with the reply brief,  
13 we've actually given you photographs of the photographs we  
14 want. The existence of those photographs is a foregone  
15 conclusion. The cops went into Epstein's mansion executing a  
16 search warrant, saw photographs, and we simply want him to  
17 produce those photographs.

18 Finally, we think we've made a compelling case for  
19 those three particular areas of documents, but at a minimum,  
20 we're entitled to a privilege log. The defendant wants to  
21 litigate, or Mr. Epstein wants to litigate, this motion to  
22 compel in the abstract, but that's not the way it's done. The  
23 local court rules, the Federal Rules of Civil Procedure, all  
24 cited in our brief, say you have to provide a privilege log if  
25 you're going to establish the privilege. Again, I'm a little

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1 frustrated because it's not my job to prove we're entitled to  
2 the documents. We served valid discovery requests. It's  
3 Epstein's attorney's job to show that he has a valid privilege.  
4 That's our first point.

5 As you know, our second point is we have 49  
6 specifically identified questions that we think he has no basis  
7 for asserting a Fifth Amendment privilege to. Ten of those  
8 questions relate to Professor Dershowitz. And the reason we  
9 are obviously entitled, in our view, to answers to those  
10 questions is he was deposed in 2010, and this was a case that  
11 he initiated. So the defense attorney said, "Do you know  
12 Mr. Dershowitz?"

13 "Yeah, he's a friend of mine. He's my attorney." He  
14 has waived privilege over Dershowitz-related questions, at  
15 least in the ambit of that answer.

16 So, obviously, in our view, questions 23 through 31  
17 are no-brainers because he's waived privilege over that, and  
18 I'm not sure they have ever really responded to that.

19 With regard to the other questions, some of these are  
20 pretty straightforward: Do you know the defendant in this  
21 case, Ms. Maxwell? I mean, you know, they lived together for  
22 ten years, and he's asserting a Fifth Amendment privilege over  
23 that?

24 Without going into the substance of any communication  
25 you've had, you've communicated with Maxwell in the last year.

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1 Again, that is not the kind of thing that can raise a realistic  
2 prospect of incrimination.

3 Here is another question. This is question 8 in our  
4 brief. In June 2008 in open court, you pled guilty to two  
5 Florida felonies. Well, that is on the record in Florida  
6 court. It's an open event with the government, by the way,  
7 who's prosecuting him, and he refused to even answer that  
8 question.

9 As you know, he refused to answer any question other  
10 than what's your name? So we have tried to be very selective.  
11 We've given you a list of 45 specific questions where we're  
12 entitled to the information.

13 Our third point, as you know, is this issue about  
14 Epstein being compelled to testify that he saw Maxwell, his  
15 girlfriend, before 2011 in foreign countries standing next to  
16 girls under the age of 18. And in response, he said, look,  
17 there's a lifetime statute of limitations for sexual abuse  
18 crimes, so I face a realistic risk of prosecution. The  
19 lifetime statute is an unusual statute, and that statute  
20 applies only to some of the most serious crimes in the federal  
21 criminal code: Sexual abuse of a child. But the only statute  
22 that was cited by Mr. Epstein was the traveler statute, which  
23 forbids traveling in foreign commerce to go someplace for  
24 nefarious purposes.

25 That is not covered by the lifetime statute. That's

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1 covered by the standard five-year statute of limitations in  
2 federal court. If you look at the elements of that crime, it  
3 involves simply traveling for sexual purposes. It's not the  
4 kind of crime that would warrant a lifetime statute of  
5 limitations. Again, that lifetime statute of limitation is  
6 reserved for very narrow offenses.

7 So we're entitled to force him -- again, we're not  
8 trying to force him to testify to everything under the sun. We  
9 want him to testify to events before 2010, so that's outside  
10 the five-year statute of limitations. And we're not even  
11 asking him to testify about events concerning him. We're  
12 asking him to say, well, when you were in Thailand, did you see  
13 Maxwell in the presence of underage girls. So, we've come up  
14 with three narrowly crafted requests, and we believe we're  
15 entitled to have Epstein compelled to answer the questions in  
16 those three areas.

17 Thank you, your Honor.

18 MR. PAGLIUCA: Your Honor, Jeff Pagliuca on behalf of  
19 Ms. Maxwell. I have also filed a motion to compel  
20 Mr. Epstein's testimony before your Honor.

21 I take a little bit of a different approach here,  
22 Judge, because in my view there has been no showing by  
23 Mr. Epstein that there is any reasonable possibility of  
24 criminal prosecution. I've not seen one document, I've not  
25 seen any letter from a police agency, I've not seen any target

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1 letter from the government, I've not seen any phone calls from  
2 anyone to Mr. Epstein. There has been no showing that there's  
3 any grand jury convened. There's no summons to Mr. Epstein to  
4 appear in any criminal matter. And all we have is this  
5 unsubstantiated assertion of "I may be prosecuted somewhere for  
6 something."

7 The law is very clear that it's Mr. Epstein's burden  
8 to establish some reasonable possibility of prosecution. That  
9 hasn't happened. And unless that happens, I believe  
10 Mr. Epstein should be forced to answer all questions put to  
11 him.

12 . It's very difficult in my view to litigate this issue  
13 in that vacuum, your Honor, because I don't know what statute  
14 of limitations we're talking about because I don't know what  
15 crime is being proffered as what Mr. Epstein may be in jeopardy  
16 of facing.

17 So I think that that should be the Court's order, in  
18 that there's been a failure to demonstrate any reasonable  
19 possibility of prosecution. Mr. Epstein should answer all  
20 questions.

21 I do think it's a little difficult to piecemeal this  
22 out, your Honor, because when I listen to Mr. Cassell, he says,  
23 I want to narrowly ask questions about what did you see  
24 Ms. Maxwell do. Well, I think the Court knows and Mr. Cassell  
25 knows, certainly, if there were a prosecution that were

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1 reasonable, all of those things would be used under a  
2 complicity theory or 404(b) theory. So if there were the  
3 establishment of a reasonable likelihood of prosecution,  
4 certainly all of those kinds of questions would fall within the  
5 Fifth Amendment, but my view is different in that there is no  
6 Fifth Amendment privilege that's been demonstrated as  
7 applicable here.

8 There's been discussion about Mr. Epstein somehow  
9 being in jeopardy in Florida, I guess. The evidence that I am  
10 aware of is that Mr. Epstein pled guilty as part of a joint  
11 state/federal investigation, and my view is that as a result of  
12 that guilty plea, along with the non-prosecution agreement,  
13 there is no reasonable possibility of prosecution. And that  
14 plea agreement seemed to encompass dozens, I believe, of  
15 alleged victims, and I am unaware of any alleged victims  
16 outside of the ambit of that prosecution. Certainly none has  
17 been proffered to the Court.

18 As cited in the papers, my view of the law is fairly  
19 clear that that operates as a bar to further prosecution, and,  
20 again, I do not see how Mr. Epstein is subject to any  
21 reasonable possibility of criminal prosecution. So that is my  
22 position on that issue, your Honor. Thank you.

23 MR. WEINBERG: Martin Weinberg on behalf of  
24 Mr. Epstein. Thank you, your Honor.

25 Let me start where the defendant left off.

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1 Mr. Epstein has a sufficient and reasonable fear of  
2 self-incrimination were he to be compelled by court order to  
3 answer the questions that were proposed to him. The fear comes  
4 in part from proceedings in the Southern District of Florida.  
5 He pled guilty to two very narrow state offenses that dealt  
6 with two women. That gives him no protection against a federal  
7 prosecution, no protection against any other allegation, no  
8 protection against the specific allegations that are front and  
9 center in the complaint in this case, where Ms. Giuffre says  
10 that Mr. Epstein with Ms. Maxwell committed a whole universe of  
11 criminal offenses against her in places, including Florida, but  
12 also in New Mexico, in New York, in the Virgin Islands in  
13 France and England and on planes. So there is no protection  
14 from the state plea for any of the allegations made by  
15 Ms. Giuffre in this case.

16 There is a risk that whatever limited protections  
17 Mr. Epstein has as a result of his signing and performing under  
18 a federal non-prosecution agreement he entered with the U.S.  
19 Attorney's Office in the Southern District of Florida, that  
20 protection is limited, and it's at risk. It's at risk largely  
21 because of the efforts of Mr. Cassell. And I don't mean to be  
22 critical. He is representing two other clients in this case.  
23 It's a crime victims rights case brought before District Court  
24 Marra starting in 2008. Still existing. Mr. Cassell has made  
25 it very clear he testified in a deposition in a different case

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1       in Florida that the "ultimate aim of the action in Florida is  
2       to invalidate a non-prosecution agreement and allow criminal  
3       prosecution."

4           Our position, as we tried to articulate it for over  
5       seven years, and this is testimony from Mr. Cassell in a  
6       related case that he was a party to and gave a deposition in,  
7       and he goes on and says that "The action CVRA, the crime  
8       victims action, is ancillary to a contemplated criminal  
9       prosecution of Jeffrey Epstein for women who were resisting him  
10      in international sex trafficking.

11           So that's the goal of the plaintiff's counsel in this  
12     case while representing two other young women in a different  
13     case down in Florida. They want to nullify the limited  
14     protection Mr. Epstein has. It's protection in Florida, but  
15     again, Ms. Giuffre's allegations are that the offenses were  
16     committed by both the defendant and Mr. Epstein in four or five  
17     other locations, some foreign, some domestic.

18           Mr. Cassell -- even though we strongly believe that  
19     Mr. Epstein who went to jail, served time, was on probation and  
20     lived up to all his conditions of this non-prosecution  
21     agreement, we strongly believe it would be unconstitutional to  
22     invalidate it, but the truth is that Judge Marra in the  
23     June 19, 2003 opinion, we cited it to your Honor, it's docket  
24     entry 189 in that case, and it now has a West citation that I  
25     believe is 950 F. Supp.2d, has said that he believes that the

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1       rescission remedy is a potential remedy. He has not dismissed  
2       Mr. Cassell's arguments. Instead, he has made it very clear in  
3       this opinion that he is strongly considering them, and if the  
4       violations, even though they were government violations of the  
5       CVRA, are proven, that he is going to consider rescinding  
6       Mr. Epstein's protections.

7              Again, those are limited protections to the Southern  
8       District of Florida, but even those are in peril as a result of  
9       the resourcefulness and arguments made by Mr. Cassell. So  
10      clearly, Mr. Epstein has a reasonable fear that if he is being  
11      asked to testify about the allegations made by Ms. Giuffre,  
12      whether it's directly or indirectly, by being asked, well, did  
13      Ms. Maxwell -- was she ever in the presence of underage women  
14      and you, the allegation is Ms. Maxwell helped Mr. Epstein have  
15      massages, erotic massages, sexual massages from underage women.

16              Any questions, whether they're in a document request,  
17      whether they're for testimony about Ms. Maxwell, about  
18      Ms. Giuffre are squarely within heartland of the Supreme  
19      Court's 1951 eight-to-one decision *Hoffman v. U.S.* I learned  
20      about that in law school back a long time ago. It is still the  
21      compelling precedent. It says any testimony that could be a  
22      link in the chain of evidence that has a reasonable risk to  
23      you, you are not compelled to testify about. It talks about,  
24      yes, we're going to give up having full testimony, whether it's  
25      in grand juries or civil trials because we are going to honor

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1       this historic privilege. I think Mr. Cassell in a very  
2 creative way has tried to ask the Court to essentially  
3 invalidate a privilege of somebody who is at risk.

4           In part, even in this case, Ms. Schultz's co-counsel,  
5 Ms. McCawley said when she was offering investigative records  
6 of another agency about an ongoing investigation, that's the  
7 word she used on April 21, 2016 at pages 18 and 19, and your  
8 Honor granted their right to provide your Honor in camera  
9 without disclosure whatever efforts were being made currently  
10 by Ms. Giuffre to motivate prosecutions or prosecutors against  
11 Ms. Maxwell, but the case against Ms. Maxwell is a case against  
12 Mr. Epstein. So he has a legitimate and principal concern that  
13 either the protections he has are too limited or they're going  
14 to be invalidated down in Florida. So that's the response to  
15 Ms. Maxwell's argument that he has no Fifth Amendment because  
16 he has no risk. He's at the epicenter of risk.

17           Directing myself more specifically to Professor  
18 Cassell's arguments, the Fifth Amendment is an issue that  
19 they've briefed, we've briefed, without agreeing that there is  
20 no statute of limits; that it's the life of a child.  
21 Ms. Giuffre is still a child. There is an interplay between  
22 questions that ask Mr. Epstein, was Ms. Maxwell with an  
23 underage woman. You know, were you with underage women and  
24 questions like that, whether it's Thailand or France or  
25 England, that if they relate to the travel, then certainly what

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1 occurred at the end of the travel is relevant to the travel.

2 Likewise, the travel is relevant to what happened afterwards.

3 We have a statute now that makes it a crime, whether  
4 it's an adult or whether you're having illegal sex with  
5 somebody for money, whether it's with somebody underage, if  
6 you're having it in Thailand, if you're having it in France,  
7 and you're an American, you are now subject to federal criminal  
8 prosecution under the statute that we gave your Honor.

9 There are other statutes. There's man acts statutes.  
10 There's travel statutes. There's a whole variety of statutes  
11 that Congress has put in to cause a legitimate risk that  
12 questions about Ms. Giuffre or Ms. Maxwell, whether the  
13 questions are fixed to a foreign location or a domestic  
14 location, could be the corroboration of Ms. Giuffre's otherwise  
15 uncorroborated allegations.

16 We have to look no farther than the Bill Cosby case.  
17 Nobody prosecuted him based on the allegation of one of the  
18 alleged victims; but when he gave a deposition, that was  
19 voluntary and made statements, that became the corroboration  
20 that led to his prosecution for events that occurred 20 or 25  
21 years ago.

22 In terms of Professor Dershowitz, yes, Mr. Epstein did  
23 testify at a prior deposition about four or five years ago. At  
24 the time nobody had made any allegations connecting Professor  
25 Dershowitz to any of the allegations against Mr. Epstein except

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1       that he was his lawyer. In the meantime, Ms. Giuffre made  
2       allegations first in Florida that Professor Dershowitz was  
3       involved in some of these alleged offenses, and so that  
4       triggers a Fifth Amendment right. Mr. Epstein is not saying  
5       Professor Dershowitz did anything, but to testify about  
6       Professor Dershowitz, has he ever been to your home, again, has  
7       the potential to corroborate the allegations made by  
8       Mr. Cassell's client.

9                  In terms of the waiver argument, the law is very clear  
10       that in contrast to an attorney-client privilege, if I was to  
11       disclose a privilege in one case, it's disclosed for all cases,  
12       but the law is very clear that you can testify in one  
13       proceeding and plead the Fifth Amendment in a separate and  
14       distinct proceeding. This was an issue that emerged in their  
15       reply brief. And if your Honor doesn't mind, I can either send  
16       in a supplement --

17                  THE COURT: Sure.

18                  MR. WEINBERG: -- which lists the cases. They're very  
19       clear. The Fifth Amendment is proceeding by proceeding.

20                  MR. CASSELL: If we could just have permission to  
21       submit parallel responses.

22                  MR. WEINBERG: In terms of the subpoena, the documents  
23       subpoenaed, Mr. Cassell focuses on three different categories  
24       of requests. One is cell records, and he says because we know  
25       that Mr. Epstein had phone records back in 2005 when he was the

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1 subject of the Florida search warrant, that, therefore, it's a  
2 foregone conclusion that he has records in 2016. And the  
3 specific request is not all telephone records. It's all  
4 telephone records associated with you, including cell records  
5 from 1999 to the present that show any communications with  
6 Ghislaine Maxwell. So he, Mr. Epstein, has to -- to answer  
7 this paragraph, it's not just dump cell records in a document  
8 response; it's go through cell records to determine from your  
9 state of mind whether any particular record matches this  
10 subpoena request, which is a record of a communication with  
11 Ms. Maxwell. Well, in this case given the allegations made by  
12 Ms. Giuffre about Mr. Epstein and Ms. Maxwell, he's got a Fifth  
13 Amendment against even admitting that he knows Ms. Maxwell;  
14 that he's spoken to Ms. Maxwell. He has a Fifth Amendment  
15 against producing a record that he spoke to her during the time  
16 period of these allegations.

17 Second is that there is no foregone conclusion that a  
18 record that existed in 2005 is still controlled by Mr. Epstein  
19 in 2016. And we cited to the Second Circuit's August 1 opinion  
20 that addressed just this issue, and they said, "Whether it is a  
21 foregone conclusion that documents remained in Greenfield's  
22 control through the issuance of the summons in 2013 is the  
23 issue. Only if the retention of a record that could be shown  
24 to exist many years before, only if they can show that it's  
25 still retained on the date of the subpoena is it a foregone

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1 conclusion," which is an exception to the Fifth Amendment. And  
2 the Greenfield case says there needs to be proof that the  
3 record is still in the control and possession of Mr. Epstein,  
4 otherwise, his producing it is an admission. This is my phone.  
5 I still have the record. This month's record shows a call with  
6 Ms. Maxwell. It's akin to testimony. They could not ask  
7 Mr. Epstein under oath "Did you communicate with Ms. Maxwell  
8 during the date and time that Ms. Giuffre says you and her were  
9 committing illegal acts?" Just like they can't get it by  
10 testimony, they can't get it through a subpoena request that  
11 requires as its predicate an admission that this is a call with  
12 Ms. Maxwell.

13 The case cited even by the plaintiffs says, "The  
14 touchstone of whether an act of production is testimonial,"  
15 which would be compelled testimony "is whether the government  
16 compels the individual to use the contents of his own mind to  
17 explicitly or implicitly communicate a statement of fact."  
18 Going through phone records, picking out a month and saying to  
19 the plaintiff, this is a record of a call I had with  
20 Ms. Maxwell is a communication, a selection by Mr. Epstein that  
21 the Fifth Amendment in decisions like *Hubbell v. United States*,  
22 discussing *Greenfield*, the Second Circuit recent opinion,  
23 cannot be the basis of a subpoena request.

24 The same thing with bank records. There is no  
25 subpoena request for bank records. What there is, is all

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1 documents relating to payments, you, Epstein, made to  
2 Ms. Maxwell or any related entity. So, again, he has to go  
3 through any financial record and select a record, use his state  
4 of mind, select a record that relates to Ms. Maxwell. And by  
5 producing it, it's akin to testifying this record is a record  
6 between Mr. Epstein and Ms. Maxwell. That's implied testimony.  
7 That's an act of production. That's akin to testimony, and  
8 that's an admission that this record is the record that is  
9 sought by the subpoena. There is no request for bank records.  
10 That would be an overbroad request. But they can't ask  
11 Mr. Epstein to use his mind to select a document, the  
12 production of which is the same as testifying to an event.

13 Photographs. They have photographs from 2005 seized  
14 in a search and seizure in Florida. Again, under *Greenfield*,  
15 the issue is not whether they existed in 2005. It's do you  
16 currently have photographs of nude women. And the act of  
17 producing a photograph of a nude would, one, corroborate  
18 allegations against Mr. Epstein that there were these pictures;  
19 and, two, require him to admit the existence of this evidence,  
20 which they don't know whether he still has or not. And that  
21 again goes back right to the heart of the *Greenfield* opinion.

22 Finally, the allegation about a privilege log. There  
23 is no privilege log that was required in a case that I provided  
24 your Honor, *SEC v. Foster*, because the issue here is not  
25 whether any specific document is privileged or not. It's

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1 whether the category of documents that are asked for in this  
2 subpoena are all privileged because they all ask Mr. Epstein to  
3 supply a document related to Virginia Giuffre, provide all  
4 documents providing relating to Ms. Maxwell, provide payments  
5 to Ms. Susue (ph), provide payments through credit cards that  
6 show Ms. Maxwell and Ms. Giuffre. In other words, all of the  
7 requests that would require him to use his mind, make a  
8 selection, and produce a record that when matched against the  
9 request would be incriminating testimony.

10 · The cases are clear, including the *Hoffman* case from  
11 1951, that you don't have to incriminate yourself, whether it's  
12 through a log or through testimony to raise the Fifth  
13 Amendment.

14 I'll end with a quote from Judge Learned Hand that was  
15 cited in a Yale Law Journal article called, "The Conjures  
16 Dilemma," which is the Fifth Amendment in civil cases where  
17 Judge Learned Hand says, "Obviously, a witness may not be  
18 compelled to do more than show that the answer is likely to be  
19 dangerous to him, else he will be forced to disclose those very  
20 facts which the privilege protects." To do a lie, to set out  
21 pictures of Virginia Giuffre 2001, the subpoena at paragraph 19  
22 page 6 of the subpoena wants a log by date and by the content  
23 of a document that you're raising a privilege to. That has the  
24 same perils as the production of the document. It would be  
25 Mr. Epstein going through documents, listing them, naming them

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1 and saying that he still eleven years later or 12 years later  
2 has a document that matches the subpoena. The Fifth Amendment  
3 protects him. He should not, respectfully, be compelled to  
4 testify to produce documents.

5 MR. CASSELL: Let me just start at the outset by  
6 noting a point of agreement. We agree that Epstein with  
7 Maxwell traveled to Florida, New York, the Virgin Islands and  
8 elsewhere to sexually abuse children, and he remains at risk  
9 for criminal prosecution in some of those cases. So we start  
10 from the same premises that there are those crimes that are out  
11 there.

12 MR. PAGLIUCA: Your Honor, I object to this colloquy  
13 because this is improper. Ms. Maxwell denies any of what  
14 Mr. Cassell is saying, and this is just another attempt to  
15 inject this inflammatory rhetoric into the record. So I  
16 object.

17 MR. CASSELL: This is our complaint. I don't know  
18 that -- I am reiterating what's in our complaint and explaining  
19 how it applies to this case is inflammatory. I just want to  
20 point out that we agree with that premise. Starting from that  
21 premise, the issue that is in three narrow areas are we  
22 entitled to produce or force Epstein to produce some  
23 information. We hear from Mr. Weinberg that the 1951 *Hoffman*  
24 case recognizes a Fifth Amendment privilege, and of course it  
25 does. More recently -- and I don't know if this was after he

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1                   went to law school -- *Fisher* case of 1976 recognized that even  
2 defendants who have committed serious crimes can be forced to  
3 produce information so long as the act of producing that  
4 information is not incriminating. And I believe Mr. Epstein  
5 has agreed that all of the documents do not have a Fifth  
6 Amendment privilege to which he's entitled to assert. The only  
7 question is whether the mere act of producing those documents  
8 is incriminating.

9                   THE COURT: Just a second.

10                  (Pause)

11                  MR. CASSELL: Thank you, your Honor.

12                  So I think we generally agree on the case law. The  
13 issue then is whether producing cell phone records -- let's  
14 take cell phone records. He says we would have to go through  
15 and pick out particular records, and that act of pulling out  
16 particular records is in and of itself incriminating.

17                  We would ask our subpoena then to be construed to  
18 avoid constitutional objections. Just give us all his cell  
19 phone records. There is no picking and choosing at that point.  
20 The only reason that some of our requests were initially  
21 narrowed was to avoid a burdensomeness objection. If that's  
22 the a problem, we would ask leave to have our subpoena  
23 construed to request all the records so that isn't the problem,  
24 and we've tried to highlight in our brief areas where he is not  
25 being required to pick and choose.

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1           He talks about the situation of, well, will these  
2 records still remain in his control years later? Of course our  
3 subpoena extends through 2016, and obviously this month's cell  
4 phone records remain in his control, not to mention records  
5 that would extend back at least some period of time.

6           He cites the *Greenfield* case, which the Second Circuit  
7 decided this summer. *Greenfield* though involved a situation  
8 where there was a tax scam going on, I don't know, offshore  
9 movement of monies and so forth. And the issue there was,  
10 well, could the government authenticate the records from these  
11 tax shelters and places like that. Here, we're talking about  
12 AT&T and cell phone companies that are not fly-by-night  
13 operations, so *Greenfield* is an entirely different situation.

14           With regard to bank records, again, he's talking about  
15 picking and choosing. Simply construe our subpoena then or  
16 give us leave to amend our subpoena so that it includes all  
17 records. He doesn't have to pick and choose.

18           Photographs. He says that, well, who's to say whether  
19 he has them today. It would be incriminating to admit that I  
20 have those photographs today. But it has to be that the act of  
21 producing the photograph is incriminating. If we were asking  
22 him to produce child pornography, he would have a point because  
23 pulling out of your pocket a child pornography would in and of  
24 itself be incriminating. We are asking him to pull out though  
25 pictures of adult women, non-pornographic pictures of children

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1 under the age of 18 and give those to us. The act of producing  
2 those photographs -- and remember, we have in the record  
3 photographs of the photographs we are asking him to produce.  
4 So that can't be incriminating to the government. And, by the  
5 way, some of the information was information that was obtained  
6 when the state authorities were searching his house, so this  
7 isn't a situation where the government is unaware of the  
8 information. They have it.

9 At the very least, we're entitled to a privilege log  
10 on all of this. He cites the *Foster* case. The *Foster* case is  
11 not a privilege log case. If you look at our reply brief, I  
12 think we have seven or eight cases in very recent years where  
13 district courts have said, yes, produce a privilege log. We're  
14 entitled to a privilege log so we can know what the documents  
15 are.

16 That's our first point. Give us the documents or at  
17 the very least, give us a privilege log.

18 The second set of issues swirls around 49 specifically  
19 enumerated questions. I noted, once again, it's Mr. Weinberg's  
20 burden to show each and every one of those questions is  
21 incriminating. He hasn't done that in his pleadings, and he  
22 hasn't done that here this afternoon.

23 I gave you just a couple of illustrations. I thought  
24 Mr. Weinberg would at least try to respond to those  
25 illustrations. He did not. The only one he did respond to was

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1 Dershowitz.

2 Dershowitz has already been let out of the bag. The  
3 cat is out of the bag on that one. He says, well, don't worry,  
4 Judge, I'm going to give you legal authorities to show that on  
5 Monday, my client can stand up and tell the government all  
6 about Mr. Dershowitz, and then on Tuesday he can say, oh, no, I  
7 don't want to answer those same questions when propounded by  
8 Ms. Giuffre.

9 That's not the way a privilege log works. Once you  
10 waive privilege over the material, it's waived. He waived it  
11 in 2010. We're entitled to answers of the ten questions  
12 dealing with Dershowitz, and we're entitled to, what is it, 39  
13 other answers to questions that are not reasonably  
14 incriminating.

15 The third area is the traveler statute. He said,  
16 look, if my client went to Thailand and then sexually abused  
17 girls with Maxwell, that's incriminating, so I'm entitled to  
18 assert the Fifth. There are a couple problems with that  
19 argument. Remember, crimes committed in foreign countries are  
20 not the proper subject of a Fifth Amendment privilege because  
21 the Fifth Amendment privilege only applies to American crimes.  
22 So now we have to get down to what American crime did Epstein  
23 commit or would Epstein be incriminating himself in if he said  
24 that in 2010 I saw Maxwell with an underage girl in Thailand.

25 There is only one statute that's been cited by

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1 Epstein, and that's the traveler statute, but the traveler  
2 statute does not involve sexual abuse. It involves traveling  
3 for illicit sexual conduct. The reason that is significant is,  
4 is there a lifetime statute of limitations for the traveler  
5 statute, or is it just a standard issue five-year statute of  
6 limitations? The standard issue five-year statute of  
7 limitations applies to all crimes presumptively, including,  
8 like Mr. Pagliuca was talking about conspiracy or something,  
9 that's a five-year statute of limitations. The only crimes  
10 that are outside the standard issue five-year statute of  
11 limitations are sexual abuse of children. The traveler statute  
12 does not involve sexual abuse of children, at least at an  
13 elemental level. You can commit a violation of the traveler  
14 statute if you just travel for certain prostitution purposes,  
15 and as a result -- and there was no case law that's been cited  
16 by Epstein -- only a five-year statute of limitations applies  
17 to the traveler crimes.

18 So even assuming arguendo that there is some  
19 incrimination about the traveler statute, it only exists for  
20 five years. I'm only going to ask Epstein questions from 2010  
21 and earlier. Of course, the significant events in this case  
22 took place in '99 to 2001, making any possibility of  
23 prosecution even more remote.

24 For those very specific questions, we believe we're  
25 entitled to have Epstein compelled to answer.

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1                   Thank you, your Honor.

2                   MR. WEINBERG: Could I have one minute to respond,  
3 your Honor? I'm sorry, Jeff.

4                   MR. PAGLIUCA: Thank you.

5                   This is a whipsaw here for Ms. Maxwell. This is a  
6 perfect illustration of the whipsaw and the problem that we  
7 have.

8                   Mr. Cassell stands up and says we agree with  
9 Mr. Epstein's counsel that Maxwell sexually assaulted people  
10 here, sexually assaulted people there with Mr. Epstein. Well,  
11 none of that actually ever happened, your Honor. So they feel  
12 free to say whatever they want to say because they know that  
13 Mr. Epstein is going to say, well, I'm asserting the Fifth  
14 Amendment privilege to whatever it is that you just said. So  
15 they can make up whatever they want to make up and implicate  
16 Ms. Maxwell, and Ms. Maxwell has no ability to get to the  
17 source of the information to use it to exonerate herself in  
18 this case. That's the whipsaw that's going on here, your  
19 Honor.

20                  There is another am problem that I want to -- well,  
21 the other problem here is this is a whipsaw that's created by  
22 the plaintiff and her counsel because the plaintiff and her  
23 counsel are trying to undo this non-prosecution agreement that  
24 then forms the basis of Mr. Epstein's Fifth Amendment privilege  
25 assertion. So to the extent that I can try to get to evidence

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1       that would be helpful to Ms. Maxwell, I'm prevented by the  
2       actions of the plaintiff and the actions of Mr. Epstein, and  
3       that's a problem in my view.

4           When Mr. Cassell talks about, well, these are these  
5       questions that I want to ask, well, all of those questions have  
6       follow-up questions from me, your Honor, which is, Ms. Maxwell  
7       didn't do this, and you weren't with Ms. Maxwell doing  
8       anything, and so we get into this, you know, descending into  
9       madness questioning with no good answer.

10          The other issue that I would like the Court to address  
11       is this reference to what was given to the Court in camera by  
12       the plaintiff that I've never seen, your Honor. This is some  
13       document that was apparently provided to the Court that I  
14       objected to, and I asked the Court to produce, that somehow  
15       implicates Mr. Epstein's Fifth Amendment privilege. So I would  
16       ask again, your Honor, that that document be produced to  
17       Ms. Maxwell because we've never seen it. So to the extent the  
18       Court is going to rely on that information, I don't believe  
19       that it's proper because we've never seen the document that was  
20       produced ex parte in camera, and we've never had an opportunity  
21       to respond to it.

22          If indeed the basis of this Fifth Amendment assertion  
23       is the plaintiff's attempt to undo the non-prosecution  
24       agreement, there's an easy fix here. The plaintiff can agree  
25       not to undo the non-prosecution agreement. The plaintiff can

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1 agree that they will not be seeking rescission of Mr. Epstein's  
2 non-prosecution agreement as part of that action, which I might  
3 add, your Honor, that Jane Doe No. 3 was Ms. Giuffre who  
4 attempted to intervene in that action and still has an interest  
5 in the outcome of that action through her lawyers. So that can  
6 be agreed to by the plaintiff in this case which would then  
7 take us out from under this problem.

8           But I am caught in the middle of trying to get helpful  
9 evidence for my client, which I believe if Mr. Epstein was  
10 allowed to testify would support her position fully between  
11 Mr. Cassell and his argument and Mr. Epstein and his Fifth  
12 Amendment privilege.

13           THE COURT: Thank you all.

14           MR. WEINBERG: Can I briefly have a minute, Judge?

15           THE COURT: No. Thank you.

16           The next order of business is the reopening of the  
17 defendant's testimony.

18           MS. SCHULTZ: This is Meredith Schultz for  
19 Ms. Giuffre.

20           This Court has already ruled that it's appropriate to  
21 reopen a party deposition when that party produces documents  
22 after she's been deposed. Cases such as *Wesley v. Muhammad*  
23 support that ruling, and pursuant to your ruling, plaintiff is  
24 having her deposition taken again next week to answer questions  
25 about the documents she produced after her deposition.

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1                 Here, defendant failed to produce two important  
2 documents until after her deposition and after the close of  
3 discovery. These documents are communications with Jeffrey  
4 Epstein, her co-conspirator and convicted pedophile, as well as  
5 with Ross Gow, her press agent who assisted her in issuing the  
6 defamation statement that is at issue in this case. As this  
7 Court will recall, defendant and her attorney, Phil Barden,  
8 wrongfully refused to produce her agent Ross Gow and forced  
9 Ms. Giuffre to spend tens of thousands of dollars to secure his  
10 deposition, finally taking place next week.

11                 If Ms. Giuffre is not afforded the opportunity to ask  
12 defendant question about these documents, she will be  
13 prejudiced and defendant will be rewarded for her failure to  
14 make a timely production. Not only are these documents  
15 communications with key witnesses, your Honor, they're about a  
16 central topic to this case, defaming Ms. Giuffre through the  
17 media. These are not emails about the weather or anything like  
18 that. They're discussing further public statements about  
19 Ms. Giuffre. And importantly, your Honor, these communications  
20 took place after the original defamatory statement and one  
21 after the commencement of this litigation.

22                 Defendant has argued that because Ms. Giuffre asked  
23 her questions about other communications she's had with these  
24 two individuals, it's unnecessary to ask about these documents.  
25 That argument is just unsupported by the facts, and defendant

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1       cites no case law to support that argument either. None of the  
2       questions posed to defendant at her previous deposition were  
3       about these two emails. They don't go to her state of mind  
4       when she was writing them, when she was communicating, and we  
5       don't have an opportunity to ask her what she was doing with  
6       those or use them to cross her prior testimony where she tries  
7       to walk away from any involvement in issuing the defamatory  
8       statement at issue here.

9                   Reopening defendant's deposition is not only necessary  
10      for Ms. Giuffre to ask about these documents. Despite being  
11      directed by this Court to answer questions that she refused to  
12      answer in her first deposition, defendant again refused to  
13      answer questions in her second deposition in direct violation  
14      of this Court's order. For example, she refused to answer  
15      questions asking whether she could remember identifying the  
16      girls who were victims of Jeff Epstein during the time she was  
17      living and working with him and recruiting girls for her. For  
18      another example, she refused to answer questions about Johanna  
19      Sjoberg, who defendant recruited for sex with Epstein under the  
20      pretense of answering telephones for her. So, Ms. Giuffre has  
21      a motion pending concerning defendant's behavior in her second  
22      deposition in which she violated the Court's order by refusing  
23      to answer those questions.

24                  Now, she's produced two more documents, important  
25      pieces of evidence, and accordingly this Court should reopen

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1       the deposition both to ask questions about the lately produced  
2       evidence, as well as the ones she refused to answer in  
3       violation of the order.

4                    MR PAGLIUCA: Your Honor, let me start with the  
5       reference to plaintiff's conduct during her deposition, which  
6       is wholly different than the issue before the Court now.

7                   At the direction of her lawyers, Ms. Giuffre refused  
8       to answer multiple relevant questions throughout the course of  
9       the deposition. The conduct in that deposition after we filed  
10      a motion to compel, her lawyers agreed that she needed to sit  
11      for a second deposition, and the only issue was whether it was  
12      going to be done by video conference or in person. Because of  
13      the egregious nature of the conduct, they knew that they had no  
14      chance at defeating that motion to compel. Here, your Honor,  
15      we are talking about two emails that were inadvertently not  
16      included in the production. We thought they had been produced,  
17      and when we went back through the documents, it appeared that  
18      they hadn't, so we produced them, as is our obligation under  
19      Rule 26.

20                  The first email, your Honor, is an email from Mr. Gow  
21      to Mr. Barden and Ms. Maxwell that is forwarding an email from  
22      The New York Times and simply it says, you know, please advise  
23      how you wish to respond. That's it. That's the entirety of  
24      this email. There is no response from Ms. Maxwell. So what  
25      we're talking about here is an email that Mr. Gow forwarded

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1 saying please advise how you wish to respond. That's it.

2 This is virtually identical to other emails that are  
3 in the same time frame that were produced that Ms. Maxwell  
4 was -- they either had the opportunity to ask her these  
5 questions or in fact asked her these questions. So it is  
6 repetitive, and there is no evidentiary value to this  
7 particular email as opposed to the other emails that deal with  
8 exactly the same thing. That is, simply somebody saying what  
9 would you like me to do, if anything, about this thing that I  
10 got from somebody else. The appropriate person to ask about  
11 that email is Mr. Gow, and they're going to do that.

12 I also find it very curious, your Honor, that  
13 throughout the papers and argument there is some assertion, I  
14 think, that either Ms. Maxwell or her lawyers have done  
15 something wrong relative to Mr. Gow and then having to go take  
16 his deposition. I don't represent Mr. Gow. I don't control  
17 Mr. Gow, who is a citizen of the United Kingdom. I can't make  
18 him come here, and I can't make him sit for a deposition. If  
19 they want to go take his deposition, that's what they need to  
20 do and not complain about it or blame it on Ms. Maxwell, which  
21 is what they seem to be doing here.

22 The other email they're talking about, your Honor, is  
23 an April 22 email, which is, again, similar to other emails  
24 that were produced from the same time frame, and they asked or  
25 had the opportunity to ask questions about the exact same

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1                   subject matter in Ms. Maxwell's deposition. So this is really,  
2 I think, much ado about nothing here, your Honor, and this  
3 motion should be denied.

4                   MS. SCHULTZ: Your Honor, the emails are certainly  
5 about a very similar subject matter as emails she was already  
6 questioned about, and that is defaming Ms. Giuffre. The timing  
7 is different though. These emails occurred after the  
8 defamatory statement was released. The fact that she is still  
9 using the same press agent has evidentiary value because she  
10 didn't fire him. She didn't throw him out.

11                  THE COURT: Ms. Maxwell will be deposed with respect  
12 to the emails. The deposition will be limited to two hours.

13                  MS. SCHULTZ: Thank you, your Honor.

14                  THE COURT: Anything else on that subject? OK.

15                  The last motion.

16                  MS. SCHULTZ: Thank you, your Honor.

17                  Defendant has turned a simple and straightforward  
18 discovery process into an unnecessary cat-and-mouse game. My  
19 next point is very --

20                  THE COURT: Now, I really would appreciate -- look, I  
21 understand this case to a degree, at any rate. I understand  
22 that there are emotional values at stake, but, you know, we  
23 don't need the categorizations. Let's just deal with the  
24 issues.

25                  MS. SCHULTZ: Sure. Yes, your Honor.

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1                   THE COURT: And we don't need to beat everybody up.  
2 Let's just get to the point.

3                   MS. SCHULTZ: This concerns electronically stored  
4 information, a very dry subject. Defendant has --

5                   THE COURT: Let me see if I understand it. You're  
6 saying that there are email accounts that you believe existed  
7 and as to which there has been no data produced. Is that it?

8                   MS. SCHULTZ: That's part of it. Your Honor, let me  
9 see if I can cut to the quick. Defendant hasn't denied that  
10 she used email to communicate during the critical time period  
11 2000 through 2002. She hasn't denied that. She has merely  
12 said, oh, the email addresses you know about are not ones that  
13 I used. I think we have a lot of unanswered questions here  
14 today, specifically what email accounts did she use those  
15 years, what email did she use in 2000, 2001, and another thing,  
16 your Honor, is new evidence --

17                  THE COURT: Wait. We're talking about a request for  
18 documents, right? And have you not requested all emails during  
19 the relevant period?

20                  MS. SCHULTZ: Yes, your Honor, and this Court's order  
21 directs the defendant to search from and produce from all email  
22 accounts and this is where I'm --

23                  THE COURT: Now, and you're telling me that you have  
24 reason to believe that there are accounts as to which she has  
25 not done this.

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1                   MS. SCHULTZ: Yes, your Honor, for two reasons, and if  
2 I can get into that. The first reason is that, like I said,  
3 defendant hasn't denied that she used an email account during  
4 those years, but she hasn't disclosed what it was. She's  
5 merely said, oh, it's not the ones you know about. I don't  
6 think it's a very plausible argument for defendant to say I  
7 didn't use emails during those years. So we want to know what  
8 email she used and whether or not those accounts still exist or  
9 if they're archived somewhere. I think under her obligations  
10 under the federal rules and under this Court's order, she  
11 should be made to disclose what email she used in 2000, in 2001  
12 in 2002. I think that's a very basic elemental part of her  
13 discovery.

14                  The secondary problem, your Honor, is defendant has  
15 represented to this Court that the Mindspring.com email account  
16 that we discovered from the police reports, she said that that  
17 is a spam account that she uses to register at retail stores.

18                  THE COURT: I'm sorry, to register?

19                  MS. SCHULTZ: At retail stores. When you go shopping  
20 at retail location. She said she uses it for spam. Publicly  
21 available information that we've gathered shows that defendant  
22 used that account not just for spam. She used it for her  
23 Dropbox account, which is an online file sharing account where  
24 you can exchange files and photographs. She's used it for her  
25 Linked In account, which is a professional networking website

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1       that has inbox and messaging capabilities where messages from  
2       your professional contacts are routed to the email you sign up  
3       with, so in her case the Mindspring. We also found evidence  
4       that she used it for her Tumblr account. That is a social  
5       media website that also has inbox and messaging where over  
6       22 percent of the content on this social website is  
7       pornographic and over 16 percent of the accounts created  
8       therein contain exclusively pornographic material.

9                   So, here we have three examples that are not retail  
10      stores. These are user created, user driven and user  
11      controlled accounts, and social media accounts and file sharing  
12      accounts. It's not a spam account. Defendant's counsel has  
13      had plenty of time to ascertain how she used various email  
14      addresses and which ones she used, but we don't have that  
15      information.

16                   Throughout the process there are still some basic and  
17      fundamental questions that have not been answered. What email  
18      account did she use in 1999, in 2000, and 2001? Are they still  
19      active? Are they archived somewhere? What communications does  
20      she have in her social media accounts? What documents and  
21      files does she have in Dropbox? The fact that we don't have  
22      answers to these questions 12 months into this litigation is  
23      troubling. Withholding information of these documents is  
24      contrary to our obligations, and it's contrary to this Court's  
25      order. If you will note, your Honor, nowhere in the response

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1 brief does it say, oh, I didn't have an email account during  
2 these years. It's a vague statement suggesting she has  
3 something that's unavailable to her on Epstein's private  
4 server.

5 THE COURT: Thank you.

6 MR. PAGLIUCA: Your Honor, so first so the record is  
7 clear Ms. Maxwell has never been asked the question please  
8 identify all of your email accounts for these years. There has  
9 never been an interrogatory to that request. There has never  
10 been a request in a deposition like that. And so this motion  
11 practice is now seemingly turning into some sort of grand jury  
12 query here.

13 We produced, your Honor, all of the responsive emails,  
14 and we spent many hours and thousands of dollars looking for  
15 these things. It is mind-boggling to me, frankly, that I'm  
16 arguing about this because we have searched every device that  
17 she has, it's been searched, and there are no responsive emails  
18 that we have not produced. I don't know what else to say other  
19 than we did it, and we don't have anything to produce to you.  
20 That's number one.

21 THE COURT: Well, what you are in effect saying to me,  
22 I think, is that you have answered the inquiry as to what  
23 accounts she has because you have searched the computers. So  
24 am I wrong?

25 MR. PAGLIUCA: Well, there's this argument that she

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1 must have had another account, and she has never said whether  
2 she does or she doesn't that I don't know how to address, quite  
3 frankly, and that relates back to the fact that nobody ever  
4 asked her did you have this account or did you have that  
5 account.

6 I can tell you what we did, and I think that answers  
7 the question, but what we did was, we collected the devices, we  
8 had them forensically searched. This is a long and involved  
9 process because, first of all, it was done once and that wasn't  
10 good enough. And then it was done again with a giant set of  
11 search terms which apparently wasn't good enough. And then it  
12 was done a third time with more expansive search terms. The  
13 third time resulted in the production of thousands of pages  
14 because there were words in there like "passport" and so on  
15 Ms. Maxwell's Terra Mar email, for example, every single email  
16 says "passport to the ocean" which is one of her catch phrases.  
17 I had to read all of those, thousands of these pages because  
18 the word passport was in there. So what I'm telling you is all  
19 of these things have been searched and everything that is  
20 responsive has been produced.

21 The Mindspring account, first of all, I take exception  
22 to what Ms. Schultz just said to the Court about somehow this  
23 is used pornographically, whatever she said. This is new  
24 information to me, which leads back to another point that is  
25 problematic on this motion. They've never conferred about any

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1 of this. If somebody said to me, oh, we found X, Y and Z, go  
2 look at it. I would go look at it and be concerned about it,  
3 but nobody has ever given me that information, and they tell it  
4 to you here without me having any opportunity to look into it  
5 and rebut it because I believe that I certainly will be able to  
6 because I believe what they're telling you is not true, period.

7 THE COURT: OK. The motion to compel additional data  
8 is denied at this time. The parties will meet and confer.  
9 After that meet and confer, you can then advise me of any  
10 issues that remain.

11 MS. SCHULTZ: Your Honor, can I serve an interrogatory  
12 asking for the email --

13 THE COURT: I'm sorry?

14 MS. SCHULTZ: I'd like to serve an interrogatory  
15 asking for what email addresses were used.

16 MR PAGLIUCA: And I object, your Honor.

17 MS. SCHULTZ: Discovery is closed. So while we're in  
18 front of you, I'm asking for permission to serve that because I  
19 don't know how to get --

20 THE COURT: Well, that where are we? Actually,  
21 correct me if I'm wrong, fact discovery is closed?

22 MR. PAGLIUCA: Yes, for months now.

23 THE COURT: And if we open it up for an interrogatory  
24 here, an interrogatory there -- I think we are stuck with  
25 whatever the record is at the moment. So you can meet and

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1 confer on this Mindsprung or spring or whatever and see where  
2 you come out. And I would be pleased to hear you again if it  
3 is necessary.

4 MR. PAGLIUCA: Happy to do that, your Honor.

5 MS. SCHULTZ: Thank you, your Honor.

6 MR. WEINBERG: Judge, since this matter is under seal,  
7 may I send the supplemental letter regarding the Fifth  
8 Amendment waiver issue?

9 THE COURT: Sure, of course.

10 MR. CASSELL: And I --

11 THE COURT: Yes, you may respond.

12 (Adjourned)

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