

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

In re: :  
JANE DOE, : Docket #20cv484  
 : 1:20-cv-00484-JGK-DCF  
 :  
 Plaintiff, :  
 :  
 - against - :  
 :  
 INDYKE, et al., : New York, New York  
 : August 5, 2020  
 Defendants. :  
 :  
 ----- : TELEPHONE CONFERENCE

PROCEEDINGS BEFORE  
THE HONORABLE DEBRA C. FREEMAN,  
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

For the Plaintiff: PARISH SHEA & BOYLE, LLP  
BY: ROBERT GLASSMAN, ESQ.  
NATHAN WERKSMAN, ESQ.  
11111 Santa Monica Blvd., Suite 700  
Los Angeles, California 90025

For the Defendant - HADDON, MORGAN & FOREMAN, PC  
Ghislaina Maxwell: BY: LAURA MENNINGER, ESQ.  
150 East Tenth Avenue  
Denver, Colorado 80203

For the Defendant - TROUTMAN PEPPER HAMILTON SANDERS LLP  
Co-Executors of the BY: MARY GRACE METCALFE, ESQ.  
Estate of Jeffrey E. BENNET MOSKOWITZ, ESQ.  
Epstein: 875 Third Avenue  
New York, New York 10022

Transcription Service: Carole Ludwig, *Transcription Services*  
155 East Fourth Street #3C  
New York, New York 10009  
Phone: (212) 420-0771  
Email: [Transcription420@aol.com](mailto:Transcription420@aol.com)

Proceedings recorded by electronic sound recording;  
Transcript produced by transcription service.

INDEXE X A M I N A T I O N S

<u>Witness</u>	<u>Direct</u>	<u>Cross</u>	<u>Re- Direct</u>	<u>Re- Cross</u>	<u>Court</u>
None					

E X H I B I T S

<u>Exhibit Number</u>	<u>Description</u>	<u>ID</u>	<u>In</u>	<u>Voir Dire</u>
None				

1 3

2 THE COURT: So this is Doe versus Indyke,  
3 20cv484, and this is Judge Freeman, can I have your  
4 appearances for the record starting with plaintiff.

5 MR. ROBERT GLASSMAN: Good morning, Your Honor,  
6 this is Robert Glassman for the plaintiff.

7 MR. NATHAN WERKSMAN: Good morning, Your Honor,  
8 Nathan Werksman for plaintiff.

9 THE COURT: I'm sorry, same firm?

10 MR. WERKSMAN: Yes.

11 THE COURT: Okay, I'm not seeing your name on  
12 the docket, how do you spell your last name?

13 MR. WERKSMAN: W-E-R-K-S-M-A-N.

14 THE COURT: Okay, who do I have for defendant,  
15 defendants?

16 MS. LAURA MENNINGER: Your Honor, Laura  
17 Menninger here on behalf of the defendant, Ghislaine  
18 Maxwell.

19 THE COURT: Okay. Do I have for the executor?

20 MS. MARY GRACE METCALFE: Your Honor, this is  
21 Mary Grace Metcalfe of Troutman Pepper on behalf of  
22 the co-executors. I know that Mr. Moskowitz is  
23 planning on joining us, he lost power and internet  
24 during the storm last night and is driving to a place  
25 where he can get internet and reception. So if it's

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

all right with everyone if we could wait just a couple of minutes for him to join.

THE COURT: That's fine, I just got off a conference call where out of four lawyers two had no power, no internet, no landline service and they were both out on the street using cell phones trying to call in and saying we have no access to our files, we have no access to anything. That's usually someone dropping off, that beep, so let me make sure I still have the people I've already identified. I have Mr. Glassman?

MR. GLASSMAN: Yes.

THE COURT: Mr. Werksman?

MR. WERKSMAN: Here.

THE COURT: Okay, Ms. Metcalfe?

MS. METCALFE: I'm here.

THE COURT: Okay, and I had counsel for Ms. Maxwell, Ms. Menninger?

MS. MENNINGER: Yes, I'm here, Your Honor.

THE COURT: Okay, I can't actually say who did we lose. All right, who just joined?

MR. BENNET MOSKOWITZ: Hi, this is Bennet Moskowitz at Troutman Sanders, can Your Honor hear me?

THE COURT: I can, I understand you've had a

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

power outage problem?

MR. MOSKOWITZ: Yes, I actually was already on the call listening to everyone (indiscernible), I apologize, my reception is terrible but what was described is correct, I have, we got hit pretty hard by this storm and I've been driving along what seems like the entire Eastern Seaboard to find a place with consistent cell phone reception.

THE COURT: Great, okay, we're having fun trying to have these conferences today in the aftermath of the storm. So I have others who are apparently on the call based on the number of participants that were identified when I joined. Is there anyone else representing a party to the case? No. Is there anyone on the call who is an attorney in one of the other cases involving the Epstein estate? Okay. Do I have my law clerk, Hanna Martin?

THE CLERK: Yes, Judge, I'm here.

THE COURT: Okay, anyone else from my chambers? All right, so who else do I have on this call, if you could just let me know who's on, I'd appreciate that, do I have any members of the press?

FEMALE VOICE: Yes, this is Emily (indiscernible) --

1  
2 THE COURT: I'm sorry, you're cutting out.

3 FEMALE VOICE: I apologize, Your Honor, I was  
4 simply identifying myself, this is Emily  
5 (indiscernible) I am a member of the media and I am on  
6 the call.

7 THE COURT: Okay, all right, is there anyone  
8 else, I don't actually need all the specific  
9 identifications, members of the press, I'll just ask  
10 you to mute your phones. Is there anyone else who does  
11 not fit one of those categories as in a lawyer for the  
12 parties, a lawyer for or a representative of a party  
13 in another case, someone from my chambers or a member  
14 of the press, or is that everybody? Okay, I'm not  
15 hearing anything so I'm assuming that's who we've got  
16 on this call. That's all fine. You know, if Mr.  
17 Moskowitz is an important person to have on the call  
18 and if we lose him or if his service is not adequate,  
19 we can adjourn the call in order to be able to have  
20 everybody to be able to participate. We really didn't  
21 need a pandemic followed by a hurricane to give us two  
22 separate problems, but the reason that I wanted to  
23 have the call, aside from the fact that I seem still  
24 to have the discovery dispute about the damages  
25 computation, I had gotten this proposed scheduling

1

7

2 order sent to me late July by Mr. Moskowitz, and it  
3 didn't indicate that it was jointly submitted. Oh,  
4 actually, I guess it did, it said it was on behalf of  
5 all parties. But the proposed scheduling order  
6 included discovery from defendant Maxwell and I just  
7 wanted to have counsel for Ms. Maxwell to have a  
8 chance to address the extent to which she's currently  
9 comfortable participating in discovery in the case  
10 given that there has now been an indictment returned,  
11 and just to make sure we're all clear on that issue  
12 involving her active participation in the case. So  
13 those were the two issues, that and then the discovery  
14 issue involving the computation of damages that I had  
15 on my agenda. Does anybody have anything else on your  
16 agendas for me?

17 MR. GLASSMAN: Your Honor, this is Robert  
18 Glassman, we still would like to discuss or I should  
19 say I would still like to discuss with Your Honor the  
20 fact that we haven't received any documents from the  
21 estate. And after I sent the Court a letter  
22 addressing some of the discovery issues I was  
23 forwarded by counsel for the co-executors a draft  
24 confidentiality agreement and nondisclosure agreement.  
25 I don't, you know, so I'd like to discuss that. I

1  
2 don't see how the documents that are responsive to our  
3 discovery requests would be covered under that, that  
4 agreement, and so I'm not inclined to sign it, but I'd  
5 like to hear Your Honor's thoughts on it. Because, I  
6 mean the most important thing for us at this juncture is  
7 just to get documents, our discovery is now more than  
8 three months outstanding and we still don't have any  
9 evidence from the co-executors. So I'd like to kind of  
10 get that moving if we can.

11 THE COURT: All right, just to check because  
12 perhaps I am losing my mental capacities here, I did,  
13 I did indicate I was recording this, right?

14 MR. GLASSMAN: Yes.

15 MS. METCALFE: Yes, Your Honor.

16 THE COURT: Okay, good, okay, I don't want to  
17 go through this and have forgotten to do that. All  
18 right, on that last issue about documents from the  
19 estate, is that teed up for me, have you had a full  
20 good faith conference, have you, and that and  
21 regarding a protective order, have you gone back and  
22 forth and is that something where you are stuck in  
23 your discussions and you need me to pay attention to  
24 it? I don't remember seeing something on that.

25 MR. MOSKOWITZ: Your Honor, it's Bennet



1  
2 Moskowitz. First, let me just pause and say can you  
3 hear me well enough at this moment?

4 THE COURT: I can hear you well enough, not  
5 well, but well enough.

6 MR. MOSKOWITZ: Okay, this is the first time  
7 I'm hearing that the other side won't sign the  
8 document, in fact, I understood the opposite. So the  
9 answer to your question is a firm no, we have not  
10 discussed their refusal to sign what has been entered  
11 in every other case against the executors. And, of  
12 course, it kind of boggles our minds because this case  
13 is brought by someone acting through an anonymous  
14 name. To the extent we produced a single document that  
15 says the name of this client or other people, that's  
16 reason alone to have a confidentiality agreement. So,  
17 yeah, there is still plenty to discuss and, no, the  
18 meet and confer process has not, if it has started, it  
19 certainly isn't complete.

20 THE COURT: All right, let's take these issues  
21 in turn. Let me start with the question that I had  
22 about defendant Maxwell's participation in the case in  
23 light of the changed circumstances on the criminal  
24 investigation turning into a criminal prosecution. Can  
25 I hear from the parties as to whether you have been

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

discussing this, whether this jointly proposed scheduling order is, in fact, being jointly proposed and is acceptable? I just want to make sure before I sign off on that.

MS. MENNINGER: Your Honor, this is Laura Menninger on behalf of Ms. Maxwell. We have had some discussions, at some point counsel for the plaintiff had indicated the desire to take her deposition in this case and I pointed out that she is in custody at the MDC and at this moment in time no one is allowed inside of the MDC, myself and her other attorneys included. And so I was unaware of any ability to take a deposition right now. Certainly, obviously, things may change over the course of the case and I think we might need to come back to Your Honor if it's still an issue. I believe that our position will be, although I don't know that it's ripe for today, similar as it was in a prior case, that is we would ask in the future, Your Honor, that her responses to interrogatories and her deposition be put off so that, you know, if there is an ability to answer questions versus asserting her Fifth Amendment right in the future in this case, then we could address it at that time. But apart from the interrogatories and the deposition I think this

1 scheduling order sets forth our joint proposal.

2 THE COURT: Well the joint proposal only has  
3 her serving initial disclosures, but it also has a  
4 deadline for the completion of all fact discovery, it  
5 has a deadline for serving all document requests and  
6 interrogatories, it doesn't say anything about staying  
7 any responses in any way. So there's no stay built  
8 into this for her and the other parties would be  
9 completely within their rights based on this schedule,  
10 if I approve it, to be assuming that she would be  
11 responding to discovery requests and responding to a  
12 deposition demand, if it's feasible, certainly  
13 interrogatory responses by the deadline set by the  
14 rules. And if that's not something that you're  
15 prepared to do, I think it should be discussed with  
16 the parties and brought to my attention before I sign  
17 off on this order.

18 I will say for everyone's benefit that it is  
19 not uncommon for discovery against someone who is  
20 currently involved as a defendant in a criminal  
21 prosecution, for discovery to be stayed because of the  
22 implications of the Fifth Amendment invocation in a  
23 civil case. As I'm sure you know, she could take the  
24 Fifth in a civil case, and it's very common for  
25

1

12

2 criminal defendants to do that, lawyers often urge that  
3 they do, but then there can be an adverse inference from  
4 that in the civil case that can really prejudice her  
5 defense. So I was just surprised that I didn't have any new  
6 application, given that she was actually indicted, and given  
7 that last time around in another case, true, but  
8 nonetheless, I was being told, well, it's only an  
9 investigation, an investigation could go on forever and we  
10 don't know if she's actually going to be charged with  
11 anything and so on, and obviously we have a changed  
12 circumstance.

13           So I don't want to argue the case for counsel, but  
14 I was just surprised that it wasn't coming up and wasn't  
15 being dealt with and that a proposed schedule was being put in  
16 front of me that did not address it and seemed to gloss over  
17 the issue. And I would be surprised if the issue doesn't  
18 come back come time to respond to interrogatories or come  
19 time for a deposition. Even apart from how easy or difficult  
20 it is to conduct a deposition while somebody is at the MDC.  
21 Let me hear on plaintiff's side since you're the one I  
22 assume will want the discovery.

23           MR. GLASSMAN: Yeah, thank you, Your Honor, and  
24 again, this is Robert Glassman. We, counsel for Ms.  
25 Maxwell, for the co-executors, and for us, we've

1  
2 engaged in several emails, we've talked on the phone  
3 about discovery in this case, and, you know, it wasn't  
4 brought up once that, you know, there would be some  
5 kind of stay as to Ms. Maxwell's participation. Ms.  
6 Menninger is correct when she said I did request, you  
7 know, some dates for Ms. Maxwell's deposition, and she  
8 advised that it would be very difficult in light of  
9 the circumstances with Ms. Maxwell right now, and it  
10 really wasn't feasible to take her deposition at this  
11 point. And I, I mean I understand that.

12 But this scheduling order that the co-  
13 executors filed was, you know, as Your Honor pointed  
14 out, jointly submitted after we discussed and  
15 deliberated over the dates. You know, everyone gave  
16 their input as to what they thought would be realistic  
17 as far as the dates are concerned. So I, you know, I  
18 would like, yeah, unless there is now an objection to  
19 it, I think everyone's, everyone has approved this and  
20 we're looking forward to it being entered by the  
21 Court. You know, so if there's, however, if there is  
22 an objection on Ms. Maxwell's side to discovery being  
23 directed or propounded on her, then I just, I think  
24 we'd have to --

25 THE COURT: All right, I'm not trying to make

arguments on behalf of any party, that's the lawyer's job and not mine, it's just that I had Ms. Maxwell as a defendant previously where an argument was made that there should be a hold on discovery because of the criminal investigation. And there were discussions raised at that time about the fact that it was merely an investigation with no obvious end in sight. And so I'm just surprised and a little confused, and if Ms. Maxwell's counsel on her behalf is, you know, is jointly making the submission and is comfortable with this, then it's all right with me and I'm happy to sign off on it. I just didn't want to sign an order and then have it all derailed because this issue, which I assumed was coming up, you know, would come up after I sign the order and throw the whole thing into some uncertainty. I would rather find out if this is an issue that is or is not being raised. If it's not been raised to date, find out why it's not been raised to date. And, you know, I don't really need your confidential thinking, I just want to make sure that I'm not signing an order only to have you come back in 30 days and say, you know, we never anticipated that this would mean that Ms. Maxwell would be answering interrogatories and would be deposed, because that's not what this order says.

So let's, I mean maybe I send you back to talk it

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

15

over and make sure that you're all in accord, and if you're not I'll decide the issue. Or I could just sign off on the order now and wait and see what happens, you know, but I would just be rather stunned if already having raised the issue elsewhere, the issue didn't get raised here.

MS. MENNINGER: Your Honor, this is Laura Menninger again. I would be in support of sending the parties back to have discussions about it, it was not part of our discussions. There were discussions that we had that we were trying to come up with dates that were reasonable but could change, you know, depending on how things change in the future, and obviously things are moving quickly and there have been a number of developments that have taken place over the last 30 days, so it's a little difficult right now to anticipate all of the issues that may come up with these proceedings occurring simultaneously.

So if Your Honor would like us to take account of those issues and have a further discussion about a schedule, we are happy to go back and confer with counsel for the other parties to reflect that in this initial scheduling order rather than asking to amend it when the discovery issues arise.

THE COURT: Why don't I do this, why don't I

1 16

2 approve this schedule as to the first three points  
3 which would be the initial disclosures deadline, the  
4 initial document request interrogatories deadline and  
5 the motions to amend the pleading or join any other  
6 parties. Which will take us to August 21, which is at  
7 least keeping you moving for right now.

8           On the fact discovery deadline, I think what  
9 I'm going to do is just send you to go back and talk  
10 about that a little bit more and make sure that you're  
11 all on the same page. And then the expert discovery  
12 can certainly be geared to the close of fact discovery  
13 in the same sort of way as it is now. But, you know,  
14 I think that you should just make sure that you're of  
15 a mind if you're going to put something forward as a  
16 joint proposal, make sure it really is a joint  
17 proposal and it's not something that gets people  
18 exasperated because you want to re-discuss it, you  
19 know, 30 days from now.

20           So go, and then if you agree, yeah, let's just  
21 say November 6, and if we end up making an  
22 application, we do, it's okay with me. And in terms of  
23 the stipulation to modify interim deadlines, if that  
24 meant the August 21 deadline that you wanted to agree  
25 to stipulate to modify that, you can still stipulate



1

17

2 to modify that as is reasonable without coming back to  
3 me, all right? I just want to avoid problems and I  
4 just see one on the horizon that I'd rather you talk  
5 about before it comes up as a problem, okay?

6 By the way, this may be the only case of the  
7 cluster, I'm not sure if there's more than one, maybe  
8 the only one where we don't have a stay in place of  
9 the case generally because of the plaintiffs  
10 participating in the claims program that was set up.  
11 Is that right, let me ask on defendants' side, is this  
12 the only one?

13 MR. MOSKOWITZ: Your Honor, Bennet Moskowitz  
14 for the co-executors, with the exception of one other  
15 case that was filed the last month, so it's really not  
16 of the same grouping if you are looking at it from  
17 this perspective, this is the only case that is not  
18 stayed. The other case that I was talking about, by  
19 the way, our answer deadline hasn't even come. And I  
20 think Your Honor is right to raise that, and this  
21 coupled with what we just heard from Ms. Menninger  
22 about the potential, whatever it is, at least partial  
23 staying of discovery against Ms. Maxwell, makes it  
24 especially appropriate from my perspective for the  
25 parties to discuss the case schedule in general. You

1  
2 know, I don't have to belabor the record, when, you  
3 know, we've done many calls in other cases. I get this  
4 is a different one, but the estate's position is still  
5 unchanged, you know, we have not moved for a stay, but  
6 there are many reasons that render it a very sensible  
7 thing to do. And the fact that now this is the,  
8 practically, virtually the only case that's moving  
9 forward, necessitates that the parties and potentially  
10 again with the Court discuss that issue.

11 THE COURT: Well I will note that this  
12 proposed scheduling order was submitted certainly on  
13 behalf of the estate, so I'm assuming you have  
14 discussed these issues before submitting that proposed  
15 schedule. But just let me hear on plaintiff's side, is  
16 plaintiff planning to participate at the moment in the  
17 compensation fund program?

18 MR. GLASSMAN: Thank you, Your Honor, this is  
19 Robert Glassman. Yes, so we have not submitted a  
20 claim to the fund yet; however, we do plan to at some  
21 point participate in it, we just have not submitted  
22 anything yet. And, you know, my understanding --

23 THE COURT: If you decide -- go ahead, I'm  
24 sorry, go ahead and finish.

25 MR. GLASSMAN: I'm sorry, Your Honor. Yeah,

1

19

2 so, you know, my understanding based on, obviously,  
3 the terms and conditions of the program, and, you  
4 know, through conversations with Mr. Moskowitz, you  
5 know, participation in the fund in no way means that,  
6 you know, the litigation needs to stop. And so we're  
7 not, we're not interested in stopping the litigation  
8 because we, quite frankly, just it is so unknown what  
9 is going to happen through this program that I think  
10 it would be very prejudicial to my client to just put  
11 everything on hold while the program result is  
12 pending. And then we just have to kind of, if it  
13 doesn't turn out appropriately or reasonably, then we  
14 just have to kind of start all over and pick up.

15 And, you know, what we're interested in is --

16 THE COURT: Why would it be, look, I  
17 understand that there is no requirement that you seek  
18 a stay if you participate in the program, no  
19 requirement that the Court stay the case if you decide  
20 to participate in the program, but there have been a  
21 lot of very able plaintiffs' counsel in these cases,  
22 including very, you know, counsel who are very  
23 strongly committed to protecting their clients' rights  
24 and interests, who have, nonetheless, decided that a  
25 stay would make sense, and have weighed the different

1

20

2 issues and have apparently concluded that a stay would  
3 not be unduly prejudicial to their clients. And the  
4 evidence in these cases is all, already several years  
5 old, the chances at this point if a litigation is  
6 commenced and there's been litigation holds put out  
7 there, the chance at this point that there would be,  
8 you know, some serious erosion in the quality of the  
9 evidence seems unlikely. There isn't that much more  
10 to do in the case, given the deadlines that are being  
11 proposed, you're proposing November and it's already  
12 August. So it seems to me that if the case is not  
13 resolved through the program you can pick up and get  
14 it done relatively quickly. And I'm not saying you  
15 should agree to a stay, but I think you should  
16 consider it and, you know, really be able to explain  
17 why it's not in the interest of judgment and judicial  
18 economy and all of the rest to put the case on the  
19 same sort of track as the other cases, and all of  
20 which I've asked for a status report pretty soon to  
21 see how it's all going. I think I had August 14 as the  
22 date I put on all of the stay orders that I issued  
23 saying that I wanted to know and keep tabs on it,  
24 wanted to know how it was going by then.

25

So I mean unless you have a particular witness

1

21

2 who you think is, you know, who might be ill or  
3 something like that, or you might lose the testimony  
4 of somebody important, or there is some, really some  
5 concrete reason why you're concerned about the  
6 prejudice that comes from delay, I want to throw it  
7 out there, especially when we have this overlay of  
8 issues regarding Ms. Maxwell and the pending  
9 indictment. Does it make sense to plow forward if  
10 you're going to participate in the program, and  
11 obviously anybody who participates in the program is  
12 not satisfied with the results and does not accept the  
13 settlement, we would put everything back on the  
14 calendar pretty quickly and the cases would get  
15 wrapped up and ready to go.

16 MR. GLASSMAN: Yes, Your Honor, my concern is  
17 that it has taken so long to just do anything we want  
18 to do in this case to date and, you know, if we just,  
19 if we put everything on ice for three, four months, or  
20 however long it will take for the administrator to  
21 consider a package and render a decision, it's just  
22 going to just delay it that much more. I mean we, you  
23 know, we haven't been able to take a deposition so  
24 far. Like I mentioned before, we don't have any  
25 evidence or documents from the co-executors. Now we do

1

22

2 have Mr. Indyke's deposition on calendar for August  
3 26, hopefully this time that date will stick, so I'm  
4 very pleased to see that we're going to start with  
5 depositions in the case. But, you know, I just think  
6 that like in most cases things really aren't going to  
7 pick up until we have a trial date and start working  
8 towards that date. So I just would like to keep  
9 moving forward at this point towards that, but I  
10 certainly will, I appreciate Your Honor's comments and  
11 I certainly will discuss them with my client.

12

13

14

15

THE COURT: And there is also a motion to  
dismiss pending which the Court is going to have to  
spend time and energy to resolve, and a decision may  
be on the way any moment, it's possible.

16

17

MR. GLASSMAN: With respect to the punitive  
damages?

18

19

20

21

THE COURT: With respect to counts one through  
four, one through four to the extent they are time  
barred, count five in its entirety, and the demand for  
punitive damages, as I read the notice of motion, no?

22

23

24

25

MR. GLASSMAN: Right, well, yeah.

THE COURT: That's not just the punitive  
damages count.

MR. GLASSMAN: No, yeah, I mean I think,

1

23

2 obviously it's the co-executor's motion, but I believe  
3 what it is, is, you know, counts one through four with  
4 respect to any allegations after the plaintiffs turned  
5 18.

6

THE COURT: Right, I mean there have been  
7 similar motions in other cases and some judges have  
8 decided them, and others where cases were stayed have  
9 held off.

10

MR. GLASSMAN: Yeah, and just so Your Honor  
11 knows, I mean out opposition on that was basically we  
12 kind of submit on it. I mean we agreed to the count  
13 five and, I mean counts one through four for sexual  
14 assault, sexual battery, NIED and IIED, yeah, I mean  
15 anything that happened after she was 18 is not, we  
16 can't recover, you know, for. So that --

17

THE COURT: That issue got taken out of the  
18 case?

19

MR. GLASSMAN: I mean that's what we argued in  
20 our, you know, set forth in our opposition.

21

THE COURT: I see. All right, by the way, I  
22 also see on the docket a motion for an attorney to  
23 appear pro hoc vice which is still unresolved. I can  
24 resolve that, I don't think that attorney is on the  
25 phone, but I can grant that motion, I'll take care of

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

that.

All right, so with respect to, with respect to your timing, go back and talk further, take not more than one week from today's date to write a new letter that's jointly submitted that tells me what the parties' positions are, and let's sort it out now instead of later so that I don't hear squawking down the pike. Okay, with respect to the computation of damages issue, I gather there is still discontent about the sufficiency of the computation, who wants to address that?

MR. MOSKOWITZ: Your Honor, Bennet Moskowitz here, my colleague, Mary Grace Metcalfe will address that issue.

MS. METCALFE: Thank you. We don't want to belabor this point which I believe Your Honor addressed in another case at the end of June involving the estate, but plaintiff has today failed to provide a calculation of damages or any supporting document that's required by Rule 26(A)(1)(a). In our letter we laid out the various responses we have received, none of which are sufficient, and despite raising this with plaintiff's counsel repeatedly over the last several months, the issue still hasn't been resolved.



1

25

2

3

THE COURT: Do I have the actual response or  
do I just have the letter that quotes from it?

4

5

6

MS. METCALFE: I don't believe we submitted  
the actual response, we did quote it in its entirety  
throughout the letter though.

7

8

THE COURT: So I read the blocked in quotes  
together?

9

10

11

MS. METCALFE: Yes, please, they consist of  
the first response, or rather the first disclosure  
that we received --

12

13

14

THE COURT: And the second blocked in quote in  
your letter is the full extent of the second  
disclosure?

15

16

17

18

MS. METCALFE: The second blocked in quote is  
what was supplemented during the amended disclosures,  
the first chunk of the blocked in quote was still  
present.

19

20

THE COURT: Okay, and was there anything  
further? I guess --

21

22

23

24

25

MS. METCALFE: Your Honor, I'm sorry, in our  
interrogatories we requested a calculation of damages  
and the content of the first two blocked in quotes  
combined is the entirety of plaintiff's responses.  
Then during our meet and confer we additionally raised

1

26

2 the issue, it was one of the few issues we were able  
3 to discuss, and plaintiff then supplemented her  
4 response to this interrogatory with the third blocked  
5 in quote which contains the reference to the New York  
6 (indiscernible) and jury instructions.

7

MR. GLASSMAN: Your Honor, I was going to  
8 suggest, I have it up here on my screen, I can just  
9 read it to you if you want --

10

THE COURT: I think I have it, unless you  
11 disagree that what's in the letter is accurate.

12

MR. GLASSMAN: Well it was kind of a little  
13 piecemeal, the second supplemental response was not  
14 set forth kind of like in its entirety continuously in  
15 the letter so I don't know if it's going to be clear  
16 to Your Honor --

17

THE COURT: Well let me just ask this.

18

MR. GLASSMAN: Sure.

19

THE COURT: If you have different categories  
20 of damages that the plaintiff is claiming, then each  
21 separate category of damages needs to be separately  
22 set out and computed to the best that you are able to  
23 do so. There are obviously going to be some types of  
24 damages that are not going to be readily susceptible  
25 to a mathematical computation and everybody

1 27

2 understands that, you know, pain and suffering is  
3 difficult or emotional distress is difficult. But  
4 there can be categories of damages that are  
5 susceptible of computation and there can be documents  
6 that support those computations, and when there is a  
7 category that is capable of being computed to the best  
8 of your ability at this time, it needs to be under the  
9 rule and the documents that support it need to be  
10 produced under the rule.

11           So, you know, if you say something like, you  
12 know, loss of enjoyment of life, okay, we understand  
13 that, or punitive damages, we understand that it may  
14 be an uncertain computation. You can still put down  
15 the particular amount that as of now you claim to be  
16 seeking as best as you are able. Everybody understands  
17 that if there's an expert report later or something  
18 and there's a need to supplement responses, they can  
19 be supplemented. You know, the rule provides that if  
20 the information is made clear, then, you know, then  
21 that can suffice as supplementation.

22           Let me just pull up for a moment the rule  
23 here. Under 26, hold on one moment, 26(E)  
24 supplementing disclosures and responses, you must  
25 supplement or correct in a timely manner if you learn

1 28

2 that in some material respect the disclosure or  
3 response is incomplete or incorrect, and if the  
4 additional or corrective information has not otherwise  
5 been made known to the other parties during the  
6 discovery process or in writing, or as ordered by the  
7 Court. So, you know, if you produce an expert report  
8 that makes clear that you have some additional  
9 information or corrective information that's made  
10 clear during the discovery process, that may work, but  
11 that doesn't excuse you from doing the initial  
12 disclosures as best as you are able at the outset of  
13 the case.

14 And in addition, you've got some categories  
15 here that are various expense categories that may well  
16 be susceptible to computation, and you may not be able  
17 to give, you know, the end amount that it's going to  
18 cost at the end of the day, so reasonable attorney's  
19 fees incurred in the case by the end of the day, but  
20 if you have estimates of, you know, court costs,  
21 quote, "other recoverable expenses," you should  
22 provide as best of a computation as you can provide.  
23 And if there are particular things that factor into  
24 plaintiff's damages, I don't know, medical bills, lost  
25 employment, if there are particular things, they

1  
2 should be itemized and you should provide the  
3 documents that support whatever you've got in the  
4 computation. If you really don't have anything,  
5 there's nothing concrete, there are no numbers you can  
6 add, then you have to say, at least in your good faith  
7 conference there are no specifics, there is nothing  
8 that we could add, we do not intend to rely on  
9 anything specific, we just intend to be, you know,  
10 coming up with general damages numbers that we think  
11 sound fair. If that's, I mean you can't invent  
12 documents, you can't invent computations if there is  
13 nothing to calculate or no formula that you can use,  
14 but if there is, you do it to the best of your ability  
15 at the outset of the case and then you supplement it  
16 later if something changes.

17 Now what is it on defendants' side that you  
18 think is, needs to be specifically itemized and  
19 computed? Ms. Metcalfe?

20 MS. METCALFE: Your Honor, I had the phone on  
21 mute for a moment. We've seen the categories that  
22 plaintiff's counsel has laid out in the first set of  
23 initial disclosures which have been sort of all  
24 grouped together, Your Honor noted the attorney's  
25 fees, the court costs, medical bills and expenses. In

1  
2 addition, the second supplement set of disclosures  
3 breaks down the calculations, or rather the categories  
4 of emotional damage to include past pain and  
5 suffering, future pain and suffering, emotional  
6 distress, loss of enjoyment of life, and then also  
7 there's the amount of punitive damages at issue. In  
8 particular, that's one we'd like to address because as  
9 noted earlier on the call, the punitive damages are  
10 the subject of a currently pending motion to dismiss,  
11 and punitive damages such as those sought by  
12 plaintiffs in this case have been consistently  
13 dismissed in other actions brought against the estate.

14           So if we could please see a breakdown of each  
15 of the categories of damages plaintiffs identified in  
16 the various disclosures, supplements and answers to  
17 the interrogatories, and then again, the basic  
18 documents in support of those categories, for example,  
19 while I know plaintiffs can't necessarily give us a  
20 concrete number on how much the litigation will cost,  
21 I think costs to date is a pretty good indicator and  
22 then an estimate of how much more time and effort this  
23 will take, that would go I think a long way towards  
24 resolving this dispute.

25           THE COURT: All right, well attorney's fees

1

31

2 are a tough one because they continue to be incurred  
3 as the case goes on and sometimes what's low at the  
4 beginning ramps up and sometimes what's high at the  
5 beginning goes down, and it's hard to extrapolate. And  
6 you know how much you're spending on your end and it  
7 probably gives you some clue as to how costly  
8 litigation is. But I will say that if you have  
9 separate categories of damages, even if the numbers  
10 that you are using for those are numbers that you just  
11 think are fair, you know, maybe based on other cases  
12 you've looked at and you don't have a means to compute  
13 them mathematically, you can still separate out the  
14 categories. So you can separate out punitive damages  
15 from actual damages. You can separate out past pain  
16 and suffering from future. You can put different  
17 numbers that then add up to your total and at least  
18 give defendants the idea of, you know, what they're  
19 dealing with in these different categories of damages  
20 that you're asserting. Is there any reason on  
21 plaintiff's side why you cannot do that?

22 MR. GLASSMAN: Well, Your Honor, so to be  
23 perfectly clear, we are not seeking any economic  
24 damages in this case, period. And it's very clear in  
25 our response that we're only seeking pain and

1  
2 suffering, emotional distress and loss of enjoyment of  
3 life. And the cases that have been cited to  
4 continuously by the co-executors in support of their,  
5 you know, disagreement with this, are cases that  
6 involve patent and copyright infringement claims,  
7 that's the *Max Impact v. Sherwood Group* case, and also  
8 the *Design Strategy v. Davis* case which is a breach of  
9 employment agreement and breach of fiduciary duties  
10 case. In those two cases, the ones that they cite,  
11 too, noneconomic damages are not being sought, period.  
12 Economic damages are being sought, profits, future  
13 sales, lost sales, and in some cases injunctive  
14 relief. But neither, in no case that is cited to does  
15 a Court ever say that pain and suffering has to be  
16 computed in some mathematical way. In fact, the law is  
17 that it's inappropriate and improper to do that.

18 So in our response --

19 THE COURT: Is there any case law that either  
20 side has identified that talks about breaking out past  
21 pain and suffering and future?

22 MR. GLASSMAN: You know, I looked, I looked  
23 for that, Judge, and I have not seen it. but I will  
24 say if, you know, if anyone is going to be satisfied  
25 with us breaking out the past and future, I'm happy to



1  
2 do that. I mean the past damages would be from 1994 to  
3 2020, or whenever the trial would be in this case,  
4 right, that's how you calculate the past. So since I  
5 don't have a trial date, I don't really know exactly  
6 how, what defines the past, but I mean it would be  
7 from 1994 to the trial date, so 26, 27 years of past  
8 pain and suffering, past emotional distress and past  
9 enjoyment of life. And then the future is from the  
10 date of the trial until the end of plaintiff's life.  
11 And obviously there's life expectancy tables that, you  
12 know, I can look at and see what a normal life  
13 expectancy is for a 39, 40 year old woman. We have no  
14 evidence, you know, and I don't think the defense has  
15 any evidence that she is going to have any kind of  
16 shortened life expectancy, she's expected to live a  
17 full life expectancy. So I can put a number on the  
18 future, too, so 2020 or 2021 through the end of her  
19 life will be the future.

20           So I'm happy to do that, but I mean we're not  
21 seeking damages for medical bills, we're not seeking  
22 damages for loss of earnings, so, you know, I think in  
23 my most recent supplemental response I can't be any  
24 clearer that we're only seeking noneconomic damages,  
25 we put a number in there what that amount is, and I

1  
2 mean we specifically say what it's based on. We say,  
3 quote, "it's based upon the damages caused by Jeffrey  
4 E. Epstein to plaintiff as a result of his repeated  
5 and malicious acts of sexual abuse, including rape,  
6 committed against plaintiff over the course of several  
7 years while she was a minor as a result of this  
8 repeated and horrific sexual abuse committed by  
9 decedent Epstein on plaintiff. Plaintiff has suffered  
10 significant and conscious past and future pain and  
11 suffering, emotional distress and loss of enjoyment of  
12 life for which he was aware she lost." And then --

13 THE COURT: Okay, let me interrupt you for a  
14 second. All right, let me rule in this way. First,  
15 separate actual damages and punitive damages. Okay,  
16 but different numbers on those since you're seeking  
17 them in different categories, okay? That will be  
18 helpful to defendants understanding, if they win on  
19 the punitive damages claim, what that does on the  
20 value of the case and that might be helpful for  
21 settlement purposes.

22 MR. GLASSMAN: Okay.

23 THE COURT: Second, I don't know and cannot  
24 know if this is a situation where the plaintiff has,  
25 based on her allegations, has suffered differently at

1  
2 differently points in her life. In other words,  
3 whether she went through a period of extreme turmoil  
4 and, you know, managed to get past it and live her  
5 life, or whether it has never abated, whether it has  
6 worsened, whether it has manifest in different ways in  
7 different levels of severity at different points in  
8 her life. So we're talking about a long period of  
9 time and it may be that the past and the future are  
10 not calculated the same way, it's not a certain amount  
11 per year from day one forever.

12           So have a good faith conversation with  
13 opposing counsel about the overall picture here,  
14 because if you're going to take the position that it's  
15 just really been a constant thing and to the extent  
16 that it's manifest differently over time, it's of no  
17 different value from the time when the events were  
18 occurring to the time immediately thereafter, to the  
19 time 10 years later or 20 years later or what may be  
20 30 or 40 years later, then let counsel understand  
21 that. And then I'm not going to require you to break  
22 it out by saying, fine, we'll just divide it by number  
23 of years of life expectancy and there you can have a  
24 calculation.

25           If, on the other hand, it is a situation where

1 36

2 things may be different past and future, then I'm  
3 going to ask you, you know, to discuss it so that  
4 defendants' counsel can have an understanding of what  
5 you're claiming and to see if it might make sense to  
6 at least break it out by past and future. It kind of  
7 depends upon what the claim is, I'll let you confer on  
8 your own part first instead of, you know, stating it  
9 now, and have a conversation with defendants' counsel.

10 If you are not claiming anything like medical  
11 expenses or anything, fine, it's not an element and  
12 doesn't have to be broken out and so on. I'm not  
13 going to require a breakout now of legal expenses, it  
14 seems a little bit silly because they are ongoing and  
15 they're going to just keep changing over time. And I  
16 think that attorney's fees applications can be made at  
17 the end of the case and everybody understands that.  
18 Court costs, everybody understands, I don't think it  
19 has to be broken out and it's going to be a drop in  
20 the bucket anyway. And expert fees, you haven't even  
21 hired your experts yet, I assume where if you have  
22 they haven't even incurred the full cost yet, and  
23 they're going to have to disclose what they're paid  
24 anyhow in connection with their reports and so that  
25 will come out that way.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

If there are no other actual damages other than the sort of general pain and suffering type damages, then we're going to leave it at that, and on defendants' side that's going to be the ruling, we're going to leave it at what I just said, all right?

MR. GLASSMAN: Thank you, Your Honor.

MS. METCALFE: Thank you very much, Your Honor.

THE COURT: Okay, now moving onto the question of documents from the estate and the protective order issue, talk further, bring it to a head, put it in writing to me if you still have an issue that you can't work out. I think defendants' point is well taken that plaintiff ought to want a protective order because plaintiff has confidentiality concerns regarding even her identify and I would imagine something like her medical records, and she's entitled, excuse me, to have some confidentiality on her very personal information. It can be used in the context of this case and, you know, should not otherwise be out there. There's no reason for, you know, for a minor's personal history of trauma to be not afforded some measure of confidentiality protection. But talk about it, if you really have an

1  
2 issue about a protective order and you think in some  
3 way it is overbroad, talk about it, bring it to my  
4 attention, I'll rule on it and we'll get an order in  
5 place that makes sense and that can be supported by  
6 the Court with the understanding that documents are  
7 presumptively public unless there is a reason to  
8 protect them. And if you show me a good reason, I'll  
9 protect them, and if you don't, I won't.

10 In terms of the production of documents, I'm  
11 assuming once the protective order issue is resolved,  
12 documents will be produced forthwith and you'll be  
13 able to work that out. I don't want undue delay but I  
14 also have some concerns about, as I said, the  
15 discovery as to Maxwell. I have some concerns about  
16 when this case can be tried anyway because we're set  
17 back on trials because of Covid, and I think you  
18 should not, on plaintiff's side, not be concerned it's  
19 moving too slowly. If the protective order is in place  
20 and you're still not getting documents, you'll put it  
21 all in writing to me and I will rule and try to make  
22 sure things move along appropriately.

23 MR. GLASSMAN: Thank you, Your Honor, just two  
24 quick points. So number one, you know, part of the  
25 issue with the protective order is we were waiting for

1  
2 Ms. Maxwell's thoughts on whether or not she thought  
3 it would be appropriate to have a protective order in  
4 this case. Ms. Menninger has said she would think  
5 about it and let us know, and we have not kind of  
6 gotten her input on that issue yet so I think that's  
7 part of the holdup. And number two, you know,  
8 presumably the co-executors of the estate do not have  
9 medical records of the plaintiffs in their possession,  
10 custody and control. In fact, to the contrary, it's my  
11 understanding, based on prior conversations, that they  
12 do have some documents with my client's name on them.  
13 They're not medical records, they are just simply  
14 documents that were, you know, found through the  
15 course of their, you know, their investigation and  
16 discovery of their client. And I don't know why, I  
17 mean I just, after reading the --

18 THE COURT: Well hang on a second, hang on a  
19 second, is the issue, let me hear from defendant's  
20 side, is the issue about the protective order the fact  
21 that the documents have plaintiff's name on them or is  
22 there some other issue?

23 MR. MOSKOWITZ: Your Honor, Bennet Moskowitz,  
24 that's one issue, but if I take a step back I'm just,  
25 again, scratching my head that something that has been

1  
2 a nonissue in over a dozen other cases against the  
3 estate is an issue here. The broader issue is,  
4 especially given Ms. Maxwell's role as a defendant  
5 here, and if Your Honor has seen any of the coverage  
6 of or otherwise knows anything about what's been going  
7 on in other litigation involving Ms. Maxwell, we want  
8 nothing to do with on the estate side any  
9 confidentiality issues. Whether it's something that  
10 seems innocuous to us that Maxwell, or this plaintiff,  
11 or someone else will claim shouldn't have been out  
12 there or should have been protected, there have been  
13 many very public problems in that regard, not having  
14 to do with us, but in the greater world of Epstein  
15 related litigation. And it just stands to reason that  
16 we would do what we did in every other case, know what  
17 the rules are for designating things confidential and  
18 if and when we identify any of those things to produce  
19 we will treat them in accordance with that agreement  
20 so that there is certainty and so that we are not then  
21 spending money and time on something that could have  
22 been avoided had we just simply entered into this,  
23 again, this pretty standard agreement at this point.

24 THE COURT: What on plaintiff's side are the  
25 problems with the proposed agreement?



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

MR. GLASSMAN: Well, so number one, there's been no showing by the estate that the documents they have contain confidential information, number one.

THE COURT: Well hold on a second, for starters, you, yourself, said that they have identified documents that have your client's name.

MR. GLASSMAN: Correct.

THE COURT: You've asked to proceed in this case anonymously. Presumably you want some protection for documents that have your client's name.

MR. GLASSMAN: Well but, Your Honor, so production of documents in discovery are not public documents, right, I mean --

THE COURT: No, production of documents in discovery are not public documents, but if you don't have a protective order, anyone with those documents is entitled to share them outside the litigation. Whereas if you have a protective order in place, it limits parties' ability to share those documents in other cases, for other purposes and with the public as a whole. So but your client, to be protected in terms of her identity, you would presumably want an order that would bind other parties from revealing documents with her name on them. Not that the estate is about

1  
2 to do that, but you would presumably want assurance  
3 that a Court would have said, no, don't do that, not  
4 for this moment in time, right, why would you not want  
5 that?

6 MR. GLASSMAN: Well I'm operating on the  
7 assumption that neither the estate nor Ms. Maxwell,  
8 well the estate already has the documents, obviously,  
9 and they haven't, to my knowledge, just publicly  
10 disseminated them so far because that would be  
11 inappropriate and I don't expect them to do that. I  
12 wouldn't expect them to do that in the future. Just  
13 because they have my client's name on them, again, I  
14 think putting a confidentiality order in a case is  
15 something that is done when there is extremely  
16 sensitive confidential proprietary information that if  
17 it got out would harm a party. And here, just because  
18 this is a high profile case, doesn't mean that --

19 THE COURT: So you want to provide releases  
20 for your client's medical records and you want  
21 defendant to be able to get those medical records, and  
22 you don't care about having a confidentiality order in  
23 place, even if it's documents being produced by a  
24 third party or by you?

25 MR. GLASSMAN: Well I've already produced,

1 43  
2 I've produced documents to the executors already,  
3 about 200 pages of them --

4 THE COURT: And you don't want a protective  
5 order for the documents that you produced, you are  
6 trusting and don't care about any assurance of  
7 protection for your client's personal information?

8 MR. GLASSMAN: No, it's not about not  
9 trusting, it's about the standards for a protective  
10 order and a nondisclosure agreement are pretty high.  
11 And I don't see any proprietary or commercially  
12 sensitive information that has any bearing,  
13 whatsoever, in this case. I mean I think that --

14 THE COURT: You don't think your client's, any  
15 treatment she may have had for emotional distress or  
16 pain and suffering, you don't think, or loss of  
17 enjoyment of life, you don't think any of that  
18 warrants confidentiality protection? I understand  
19 you're saying that those are not documents currently  
20 in defendants' hands, but you're providing documents  
21 to them of that nature and you might assume that  
22 they're not to show anyone. But you don't think that  
23 that would constitute the kind of material that is  
24 appropriately protected by the Court?

25 MR. GLASSMAN: Your Honor, I really don't. So,

1  
2 I mean, unlike perhaps other, you know, like kind of  
3 cases that the lawyers for the estate work on, I mean  
4 all my cases involve medical issues and medical  
5 records. And there are not protective orders put in  
6 place just because a defendant gets a HIPAA release  
7 for a medical record, or a plaintiff and then gets  
8 those records and can share them with their experts  
9 for litigation purposes.

10 THE COURT: So let me ask the estate this, are  
11 there any confidentiality issues that you can think of  
12 that do not relate to plaintiff's information,  
13 plaintiff's identity, plaintiff's personal  
14 information, is there anything else that you think  
15 ought to be given confidentiality protection?

16 MR. MOSKOWITZ: Yes, Your Honor, Bennet  
17 Moskowitz here. (indiscernible) all the other orders  
18 that were entered in the others actions, including,  
19 for example, without conceding that they're relevant  
20 here but certainly they're things that plaintiff has  
21 asked for in requests that we object to, financial  
22 information that is not public, information about  
23 other nonparties to the extent they come up in  
24 documents. What about deposition testimony? You can't  
25 just, plaintiff said they're kind of assuming that

1  
2 there's this group of documents and this group, let's  
3 talk about them now, no, this is for planning for the  
4 unknown, of all the fraud issues that will come up in  
5 this case, and that have already come up in this case.  
6 You have one defendant who's been indicted. I'm kind  
7 of concerned here that I don't hear what the prejudice  
8 is to plaintiff of something that would --

9 THE COURT: Okay, well look, look, hold on a  
10 second, if there has been a protective order entered  
11 in another case involving personal information  
12 regarding other plaintiffs, we're not going to get  
13 around that by having documents in this case produced  
14 that mention these other plaintiffs who claim to be  
15 victims of Mr. Epstein, and have not protected because  
16 they've been produced in this case. Similarly, if this  
17 plaintiff were to testify about knowledge about  
18 someone else she knew, even if not a plaintiff in  
19 another case, but somebody else who was potentially a  
20 victim, I think it is entirely appropriate to protect  
21 the identities of victims and information about the  
22 circumstances, personal information about the  
23 circumstances of other victims, especially if they  
24 were minors, so there's that. Even if this plaintiff  
25 through counsel doesn't think that her own information

1  
2 needs to be protected, I'm not going to gloss over the  
3 fact that there may be information that's produced or  
4 that comes out in testimony regarding other claimed  
5 victims. And to me, the quintessential information  
6 that is appropriate to protect is highly sensitive  
7 personal information such as information about sexual  
8 abuse of a minor. That is highly personal and, you  
9 know, unless there is further consideration by the  
10 Court about why it should be released, in the first  
11 instance that's appropriate to keep for use in the  
12 case and not to share widely.

13           Second, financial information, I don't know,  
14 whose financial information are we talking about? What  
15 kind of financial information are we talking about?  
16 You know, that warrants some discussion. But you could  
17 have a protective order that has a provision in it and  
18 once documents are produced, if somebody wants to use  
19 them for purposes other than the case or thinks that  
20 the designation was really overbroad or improper, you  
21 can come back to the Court and I can take a look at it  
22 and I can determine whether it really is appropriate  
23 or not for protection. You know, Mr. Epstein had a  
24 certain amount of wealth, that's not contested, I'm  
25 sure, information about his finances may not be the

1  
2 sort of thing that is appropriate for protection at  
3 this point. But there may be other kinds of  
4 information that's not public, I don't know what  
5 you're talking about. But you should talk through  
6 these things and I think it makes sense to have a  
7 protective order in this case that covers at least  
8 certain categories of information, and I don't see why  
9 you shouldn't be able to discuss those categories and  
10 come up with something sensible and have a provision  
11 in there that says that you can return to the Court if  
12 you think a designation was overbroad.

13 I do not sign protective orders unless they  
14 have some specificity. I will not sign an order that  
15 says we can keep confidential anything we think is  
16 confidential, that's not acceptable. The public has to  
17 understand what the rationale is for having something  
18 kept confidential, so it has to be spelled out what  
19 the category is so that you can see on its face what  
20 it is that the Court has decided to afford protection  
21 to. So nothing vague. But I don't think that it's  
22 appropriate to have no protections in a case that  
23 involves one and potentially more through discovery  
24 claimed minor victims of sexual abuse. I mean if  
25 that's not highly personal, I don't know what is.

1  
2 I'm going to send you back to the well. Again,  
3 I'm going to send you back to talk. As far as Ms.  
4 Maxwell is concerned, counsel, be part of the  
5 conversation. Okay, I know there is some stuff going  
6 on about testimony that Ms. Maxwell has given  
7 elsewhere and whether it should be public or not, and  
8 I know that's currently in the courts and being  
9 discussed and, you know, there may be some precedent  
10 that's relevant, and we'll take it all into account.  
11 But you should be in discussions, in an initial  
12 discussion phase of what sort of protection order, if  
13 any, should be issued by the Court, okay. And on  
14 plaintiff's side, if this is what's slowing down  
15 production of documents, then let's get the issue  
16 about the protective order teed up quickly and I'll  
17 try to resolve it as quickly as I can so that the  
18 production can follow.

19 MR. GLASSMAN: Okay, Your Honor, thank you,  
20 thank you, it's still not seen on the issue of  
21 documents how, you know, the estate is trying to act  
22 like they're protecting my client's privacy here, I  
23 mean --

24 THE COURT: That's not what I'm hearing. What  
25 I'm hearing is that the estate wants some certainty as



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

to what it can and can't do to avoid issues later and to avoid charges later that they improperly disclosed something or didn't keep something confidential.

MR. GLASSMAN: But we can't litigate in secret, this is a public case in a public forum and I just feel like every time we talk about this, I get the statement that, well, every other case has decided --

THE COURT: Okay, for defendants' benefit, I don't care about every other case, I care about this case. I do care that information relevant to other cases may possibly come out through this witness or through the documents that defendants have. If, for example, there's a document that list three names, one might be your client, you may not care if your client's name is public, even though you wanted to proceed anonymously, but the other two may care, and the other two may have good reason for caring. And the defendant is right to question whether there should be some protection so it knows what the ground rules are. Right, let's put the ground rules in place. And if your view is there should be no ground rules and everything should be fair game, then I'll allow defendant to make its own application for a protective order, I'll hear your

1  
2 argument as to which provisions are or are not  
3 appropriate and I'll decide what provisions should or  
4 should not be in place. But I'm inclined to issue an  
5 order that allows at least some protection for  
6 identities and highly personal information regarding  
7 alleged victims.

8 MR. GLASSMAN: Okay, so we can go back, as you  
9 said, to the well and probably narrowly tailor that  
10 this --

11 THE COURT: You can narrowly tailor it, if you  
12 have a dispute about certain categories of  
13 information, Mr. Moskowitz mentioned financial,  
14 nonpublic financial information, you can talk about  
15 what that means, what would be covered by that  
16 category, what kind of financial information of whom  
17 are we talking about. If you cannot reach agreement  
18 on that, you let me know what the issue is and I'll  
19 decide it. Okay, Mr. Moskowitz, I am more concerned  
20 about personal information of minor victims than I am  
21 about financial information but I don't really know  
22 what you're talking about. It's not a trade secrets  
23 kind of case, it's not, you know, a case where  
24 somebody has a customer list that somebody else might  
25 steal, right, so be cautious about what it is, and I'm

1  
2 not going to entertain the argument of, well,  
3 everybody else agreed so you should, too. This case is  
4 its own case, and bringing me back to what I was  
5 saying before, it seems to be the only one that is  
6 going full force which should lead to another  
7 conversation. Not trying to twist anybody's arms  
8 here, I just think you need to talk because I don't  
9 want to see money unnecessarily spent if you're going  
10 to decide a month from now that maybe the case should  
11 be stayed. Figure it out now, figure it out, figure  
12 out whether it should be stayed in its entirety  
13 because the plaintiff wants to participate in a  
14 program, figure out whether it should be stayed in  
15 part as to defendant Maxwell or not, and if in part,  
16 what part. You know, figure out now, try to figure  
17 out now the scope of an order so that, a protective  
18 order so that everybody has clear guidance on  
19 production of documents on both sides and knows what  
20 they can and can't do. And so that the public and the  
21 press knows what they can and can't get their hands on  
22 for the asking. And bear in mind that this discovery  
23 material, yes, it's exchanged between you, but it may  
24 well be provided to the Court in connection with a  
25 motion. And if so, and if the Court relies on it and

1  
2 it becomes a judicial document, some of those  
3 presumptions of confidentiality are going to disappear  
4 anyway because the public is entitled to know what the  
5 basis was for the Court's decision. So think about the  
6 whole ball of wax when you're talking and, you know,  
7 think about a protective order that maybe lays it out  
8 a little bit more clearly than some other ones that  
9 you've negotiated if you feel the need.

10 All right, go back and talk some more. I'm  
11 going to grant the motion for pro hoc vice counsel,  
12 that's easy. I'm going to approve the scheduling  
13 order that's been proposed as to the August dates and  
14 then ask you within a week to send me a joint letter,  
15 all counsel, as to whether you're in agreement as to  
16 what should happen with regard to the close of fact  
17 discovery and expert discovery or not. If you're not,  
18 tell me where the disagreement lies, if I need to have  
19 another conference I will. On the computation of  
20 damages, to summarize, break out punitive and talk  
21 with your client about the question of whether other  
22 damages were consistent over time or not. If not, try  
23 to break it out in a way that makes sense. If so, if  
24 it's consistent over time, I'm not going to require  
25 it. I'm not going to require breaking out attorney's

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

53

fees and the like with separate amounts. And on document production, if you end up slowed down even after this protective order, then you come to me with an informal motion to compel and I'll try to get on it and try to get you moving, okay?

MR. GLASSMAN: Thank you, Judge.

THE COURT: Got all that?

MR. GLASSMAN: Yes.

THE COURT: All right, everybody, carry on.  
Be well. Hope you get your power back soon.

MR. MOSKOWITZ: Thank you, Your Honor.

MR. GLASSMAN: Thank you.

(Whereupon the matter is adjourned.)

C E R T I F I C A T E

I, Carole Ludwig, certify that the foregoing transcript of proceedings in the United States District Court, Southern District of New York, Jane Doe versus Indyke, et al., docket #20cv484, was prepared using PC-based transcription software and is a true and accurate record of the proceedings.

Signature Carole Ludwig

Carole Ludwig

Date: August 12, 2020