

K5m2FarC

1 UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
2 -----x
ANNIE FARMER,

3 Plaintiff,

New York, N.Y.

4 v.

19 CV 10475 (LGS)

5 DARREN K. INDYKE, in his
6 capacity as executor of the
Estate of Jeffrey Edward
7 Epstein; RICHARD D. KAHN, in
his capacity as executor of
8 the Estate of Jeffrey Edward
Epstein; and GHISLAINE
9 MAXWELL,

Teleconference

May 22, 2020
11:00 a.m.

Defendants.

10 -----x
TERESA HELM,

19 CV 10476 (PGG)

11 Plaintiff,

12 v.

13 DARREN K. INDYKE, in his
14 capacity as executor of the
Estate of Jeffrey Edward
15 Epstein and RICHARD D. KAHN, in
his capacity as executor of
16 the Estate of Jeffrey Edward
Epstein,

17 Defendants.

18 -----x
JULIETTE BRYANT,

19 CV 10479 (ALC)

19 Plaintiff,

20 v.

21 DARREN K. INDYKE, in his
22 capacity as executor of the
Estate of Jeffrey Edward
23 Epstein and RICHARD D. KAHN, in
his capacity as executor of
24 the Estate of Jeffrey Edward
Epstein,

Defendants.

25 -----x

K5m2FarC

-----x
JANE DOE 1000, 19 CV 10577(LJL)

Plaintiffs,

v.

DARREN K. INDYKE, in his
capacity as executor of the
Estate of Jeffrey Edward
Epstein and RICHARD D. KAHN, in
his capacity as executor of
the Estate of Jeffrey Edward
Epstein,
Defendants.

-----x

Before:

HON. DEBRA C. FREEMAN,

Magistrate Judge

APPEARANCES

BOIES, SCHILLER & FLEXNER, LLP
Attorneys for Plaintiff
BY: SIGRID S. McCAWLEY
SABINA MARIELLA
ANDREW VILLACASTIN

TROUTMAN SANDERS, LLP
Attorneys for Defendants Indyke and Kahn
BY: BENNET J. MOSKOWITZ
MATTHEW J. AARONSON
VALERIE SIROTA

HADDON, MORGAN & FOREMAN, P.C.
Attorneys for Defendant Maxwell
BY: LAURA A. MENNINGER

K5m2FarC

1 THE COURT: This is Judge Freeman. We might have a
2 court reporter, but I'm going to record this call anyway, so
3 hold on while I set that up.

4 All right. So this is Judge Freeman, and this is a
5 conference in four of the cases against the Jeffrey Epstein
6 estate: Farmer v. Indyke, 19 Civ. 10475; Helm v. Indyke,
7 19 Civ. 10476; Bryant v. Indyke, 19 Civ. 10479; and Doe 1000 v.
8 Indyke, 19 Civ. 10577.

9 If you are here for some other case or you think I got
10 those numbers wrong, please make sure I know about it.

11 But I'm going to ask for your appearances. We have
12 quite a number of people on the line. Let me have the
13 appearance first by plaintiff's counsel in these cases.

14 MS. McCAWLEY: Yes, your Honor. Good morning. This
15 is Sigrid McCawley from the law firm of Boies, Schiller &
16 Flexner, and I'm representing the plaintiffs in the actions
17 that you listed. Along with me, I have my colleague Sabina
18 Mariella and Andrew Villacastin. We also have a few of our
19 summer associates who have joined the line as well.

20 THE COURT: All right.

21 Do I have a court reporter on the line?

22 THE COURT REPORTER: Yes. Good morning, Judge. This
23 is Kristen Carannante.

24 THE COURT: I'm going to ask anyone who is giving
25 appearances for the record to please spell your name. So,

K5m2FarC

1 Ms. McCawley, if you could please spell your name and the names
2 of your colleagues.

3 MS. McCAWLEY: Of course. Sigrid McCawley, which is
4 spelled S-I-G-R-I-D, and the last name is McCawley,
5 M-c-C-A-W-L-E-Y. I also have with me Sabina Mariella, which is
6 S-A-B-I-N-A M-A-R-I-E-L-L-A and Andrew Villacastin, and that's
7 A-N-D-R-E-W and Villacastin is V-I-L-L-A-C-A-S-T-I-N.

8 THE COURT: You are counsel in all of the cases that
9 are on for today?

10 MS. McCAWLEY: Correct. Correct, your Honor.

11 THE COURT: Can I have defendants' counsel, please?

12 MR. MOSKOWITZ: Hi, your Honor. Again, this is Bennet
13 Moskowitz, B-E-N-N-E-T, last name M-O-S-K-O-W-I-T-Z, at
14 Troutman Sanders, for the co-executors in each of these cases.

15 My colleagues who handle the day-to-day discovery,
16 Matthew Aaronson and Valerie Sirota, are on. That's Matthew is
17 M-A-T-T-H-E-W, last name is Aaronson, A-A-R-O-N-S-O-N; and
18 Valerie, V-A-L-E-R-I-E, last name Sirota, S-I-R-O-T-A, and we
19 are counsel for the co-executors in each of these cases.

20 THE COURT: All right.

21 Do I have any other attorneys who are on or
22 representing plaintiffs in any of the other cases that are
23 pending before the court? No. All right.

24 MS. MENNINGER: Your Honor --

25 THE COURT: Yes.

K5m2FarC

1 MS. MENNINGER: Sorry. This is a defendant's counsel
2 for Ms. Maxwell, Laura Menninger.

3 THE COURT: Oh, yes.

4 MS. MENNINGER: I am in the 10475 case.

5 THE COURT: Can you spell your name, please?

6 MS. MENNINGER: Yes. It is L-A-U-R-A
7 M-E-N-N-I-N-G-E-R.

8 THE COURT: Okay. And, again, are there any other
9 attorneys on the line in any of the cases?

10 All right. I'm going to assume, then, that anyone
11 else on the phone is public or press and just ask you to please
12 keep your lines muted.

13 Sometimes on these calls we hear beeps which suggest
14 that someone else may have joined in the call. It can also
15 suggest that someone may have dropped off the call. And
16 because of that, I will probably interrupt anyone who is
17 speaking just to try to make sure that we didn't lose anybody
18 or we didn't gain anyone we should know about. It is not a
19 courtroom where I can see people coming and going, so I just
20 like to make sure we didn't accidentally lose one of the
21 counsel who is supposed to be present. And I apologize in
22 advance for the interruptions.

23 Do I have Hanna Martin on?

24 MS. MARTIN: Yes, Judge, I'm here.

25 THE COURT: Okay. That's one of my law clerks, just

K5m2FarC

1 so you know.

2 All right. So I have letters in these cases. They
3 have come in clusters of letter and response and reply in the
4 three cases where Ms. Maxwell is not a party, and then there
5 are letters relating to her in the case where she is a party.

6 Let me start with the other cases where she is not the
7 party and deal with those letters first.

8 Can I have, from Ms. McCawley, just a status update
9 from you where things stand with your current request, with
10 your understanding about potential settlements?

11 MS. McCAWLEY: Yes, your Honor.

12 So with respect to the requests, we have presented to
13 the court a main threshold issue which has been unresolved at
14 this point by the parties, and that is the issue of the time
15 period within which the defendants, the estate, will produce
16 documents. That issue remains unresolved.

17 It is the plaintiffs' position that documents for the
18 entire relevant time period for each plaintiff, which runs from
19 the date of their abuse, that year, to the present, are
20 responsive and relevant to discovery in the case. That goes to
21 the evidence with respect to any of the conduct that Epstein
22 was engaging in over those years that would prove the abuse,
23 not simply, as in a car crash case, you don't just get the
24 evidence of the date of the car crash, you get all evidence
25 relating to anything that's relevant and could be used

K5m2FarC

1 potentially at trial. Similarly, here, the defendants have
2 attempted to limit the production to simply the year of the
3 abuse or years of the abuse, if it happened in more than one
4 year. It is our position that all evidence relating to the
5 over 20-year span of Epstein's abuse of not only our clients
6 but other clients that are similarly situated, other women that
7 are similarly situated, is highly relevant to the discovery in
8 this matter.

9 And of course, as your Honor knows, the plaintiff has
10 the burden of proving her case in each of these instances, and
11 the estate has taken the position of attempting to prove
12 Epstein's innocence, therefore making all of this information
13 highly relevant for the entire time period.

14 This is similar to other cases that have come before
15 in the Southern District of New York. For example, Judge
16 Sweet, in his case with one of the victims, allowed discovery
17 for the entire time period from 2000 to the present; and that
18 is, again, because, under 415, evidence of other abuse can be
19 admissible at trial. So we believe that the entire time period
20 is highly relevant, and those documents need to be produced.

21 The status of this, as of the date of filing our
22 letters, no documents have been produced. In the last couple
23 of days, in Ms. Helm's case and in the Jane Doe 1000 case,
24 there has been one document produced by the defendants. In the
25 case of Annie Farmer there have been three documents produced,

K5m2FarC

1 one of which was clawed back. And in the case of Juliette
2 Bryant, there have been 90 documents produced, and that is on
3 their side.

4 So we are still in a position where we have not
5 received any substantial document production in this case. The
6 court will remember that, back on January 28 -- the cases were
7 filed in November. Back on January 28 we sent -- after your
8 hearing that you had in December asking them to preserve
9 documents, we sent a document preservation letter that outlined
10 in very specific detail the e-mail accounts for which we were
11 aware of that Mr. Epstein had utilized.

12 You are going to hear today, and you saw in the
13 filings from the defendant about their claims of burdens, they
14 have not justified burden at this point. They have thrown
15 around a number of 700,000 documents. I will tell you that we
16 have already gone through 600,000 documents in just Annie's
17 case alone for our production. They have not produced a hit
18 list to show burden or otherwise establish why our request
19 would be so burdensome.

20 So with respect to -- and that is only -- now, they
21 are only still responding to the time period that is the one-
22 or two-year window, depending on the particular plaintiff. So
23 at this stage we do not have -- that is still the threshold
24 issue that we are asking this court to resolve. We need that
25 issue resolved before we can undertake depositions or get this

K5m2FarC

1 case moving, because we at this point have no documents of any
2 substance from the other side. So that is the key issue that
3 we have put before the court for resolution.

4 They have produced supplemental interrogatory
5 responses. Again, those are still limited to the time period
6 that they have set forth. They have not agreed to produce
7 information for the entire time period at this point.

8 So that is the key issue that we put before the court
9 that we need resolution on it in order to be able to move these
10 cases forward at this point.

11 THE COURT: All right. Before I ask some questions
12 about that, let me just ask about potential for settlement of
13 these cases. What is plaintiffs' understanding?

14 MS. McCAWLEY: Potential for settlement in these
15 cases, as your Honor knows, there was the proposal of a
16 potential claims administration program that came about in the
17 fall of this past year. That program has been through a series
18 of back-and-forth between the U.S. Virgin Islands' A.G. and the
19 estate, with input from the various plaintiffs' attorneys, as
20 well. The program has not yet been approved. It has made
21 headway, but it has not yet been approved to move forward.
22 There are still issues with respect to a release and other
23 matters, so that has not gotten off the ground at all. So
24 there have been no substantive settlement discussions of any
25 kind in these cases.

K5m2FarC

1 And, again, if --

2 THE COURT: If the program --

3 MS. McCAWLEY: Sorry.

4 THE COURT: If the program gets off the ground, the
5 program as you understand it to be fashioned, would these
6 plaintiffs be likely to participate in it?

7 MS. McCAWLEY: We would still have to have those final
8 conversations with the clients pending what the final outcome
9 of the program is, but they have all been interested in trying
10 to participate in a program if it does go forward.

11 Our concern, of course, is that that program has been
12 delayed and has not moved forward, so we have had the need to
13 press forward with our case. Of course, in that program, too,
14 any offer that could be made could be very substandard, where
15 our clients would want to proceed with the merits of their
16 action, which is why we are here before the court trying to
17 seek resolution of our clients' claims, because there is no
18 guarantee with respect to that program whatsoever. So we are
19 in a position where we need to and want to move forward with
20 discovery without further delay to be able to get to the merits
21 of our clients' claims.

22 Any discovery they would receive in these matters
23 would be relevant anyway to those discussions with our
24 presenting claims to the claims administrator. So we see that
25 as coinciding and being relevant and responsive to Epstein

K5m2FarC

1 being able to establish our claim, again, before the claims
2 administrator.

3 THE COURT: All right. And going back to your request
4 to compel discovery from defendant, you say that the time frame
5 is the issue. I believe the letter was presented, it appeared
6 to say in general you hadn't gotten discovery responses to
7 document requests or interrogatories, and then you highlighted
8 this issue. Is this really the key issue or the only issue or
9 are there other issues with respect to just not getting
10 responses?

11 MS. McCAWLEY: Well, you are correct, your Honor. At
12 the time we wrote the initial letter, the responses were --
13 there were not responses, there were just objections. They
14 have since supplemented their responses but, again, limiting it
15 only to the time frame. So we still may have issues with those
16 responses, because at this point we only can see them as to the
17 time period within which they are saying the abuse victims --
18 that time period where they were abused, so we don't believe
19 that they are fulsome at this point. But if the court could
20 resolve the threshold issue of whether or not they have to
21 produce for the entire time period, they would then supplement,
22 or our assumption is that they would supplement their responses
23 both to interrogatories and to the requests for production, and
24 then we could evaluate at that point if it appears there is
25 anything missing.

K5m2FarC

1 THE COURT: And why would it not be the case that,
2 document request by document request or interrogatory by
3 interrogatory, the inquiry might be different as to what time
4 frame would be appropriate to look at? There might be some,
5 depending upon how the request is framed, where it would be
6 appropriate to look at a longer time frame; and there may be
7 some, based on the nature of the request, where that would not
8 make sense to look at a longer time frame. Why should I be
9 doing this on a global basis?

10 MS. McCAWLEY: Well, that's a very fair question, your
11 Honor. So the requests, for example, seek information
12 related -- like the request number one is information related
13 to the plaintiff including diary, diaries, journals, calendars,
14 any information, travel itineraries that relate to that
15 plaintiff, and that could be in any time period. For example,
16 if Epstein's last year was talking about one of our client's
17 and had information that he had recorded in an e-mail about one
18 of our clients, that would be responsive.

19 So the time period does pertain, in my view, to all of
20 the requests. We have not -- they have not come to us and said
21 a particular request only applies for these reasons to one
22 particular year. In my view, the request, for example, for
23 flight logs, if there are not flight logs in a certain year,
24 they would only produce what they have, obviously. But if they
25 have flight logs for the entire time period, we would want

K5m2FarC

1 those. So it is -- your Honor is correct that there can be
2 some request-specific issues, but they haven't agreed to
3 produce anything outside of the year of the abuse at this
4 point.

5 THE COURT: Are there some requests that relate to
6 people other than your clients?

7 MS. McCAWLEY: Yes.

8 THE COURT: Other than --

9 MS. McCAWLEY: For example -- yes.

10 So as I said before, it is our position that, with
11 respect to our clients' claims in each of the cases,
12 information relating to Epstein's abuse of other victims is
13 highly relevant under 415, particularly to establish that this
14 pattern of luring in young girls in the same way, for example,
15 with saying they are interviewing for a modeling job or saying
16 they are coming for an assistant's interview, the pattern of
17 how he lured girls in, then abused them is relevant to our
18 clients presenting their claims to the jury to prove the truth
19 of the fact that they have before, as well, abused in a similar
20 manner. So we firmly believe that that information is highly
21 relevant to the case.

22 Again, the estate has taken the position, and you have
23 seen it in our filings, that Epstein is innocent, and we have
24 to prove the truth of that, as well as with respect to all of
25 these cases. So we are in a position where we are having to

K5m2FarC

1 fight to get discovery from the estate. I would was certainly
2 hoping it would not be this kind of a battle. I was hoping
3 that now that he is no longer taking his Fifth Amendment
4 privileges, no longer with us, that we would be able to get
5 substantive discovery in a more streamlined manner, but that is
6 not the case.

7 And any threshold issue is very important because it
8 implicates our clients' ability to be able to present their
9 case and to be able to substantively be able to depose witness.
10 As your Honor knows our discovery deadline is looming in early
11 July. We need to be able to take the depositions of various
12 people who either interacted with our clients or who were
13 witnesses to the abuses that occurred in Epstein's various
14 homes, and we need the information and the documents from his
15 files that establish and relate to the abuse, and those are the
16 requests that we have put forward.

17 THE COURT: All right. I have some thoughts on this,
18 but let me hear from defendants first.

19 MR. MOSKOWITZ: Hi, your Honor. Bennet Moskowitz.

20 If I may, I would like to address the program issue
21 first, which I think is much quicker than the discovery. My
22 colleague, Matt Aaronson, will discuss the discovery issues, if
23 that's okay.

24 THE COURT: Okay.

25 MS. McCAWLEY: So I am very, very surprised to hear

K5m2FarC

1 Ms. McCawley give a presentation that seems like her clients
2 are lukewarm on the program. She is on the e-mails from this
3 week where Brad Edwards, who represents five plaintiffs and we
4 understand the vast majority of claimants all of whom want to
5 participate in the program according to him, announced to us on
6 the estate side that he was able to get the Attorney General to
7 finally step aside and let the program move forward. So my
8 first surprise is hearing that Ms. McCawley thinks that the
9 program is still in some vast limbo. It is not for all of the
10 reasons that I discussed this morning, which Ms. McCawley is
11 aware of.

12 THE COURT: Hold on a second. We have two separate
13 conferences. One was at 10:00 and this one is 11:00. So when
14 you say that we discussed this morning, Ms. McCawley, unless
15 she didn't announce herself, was not on that call and doesn't
16 know what you said at that conference.

17 MR. MOSKOWITZ: Sure.

18 MS. McCAWLEY: (Inaudible).

19 THE COURT: I'm sorry?

20 MS. McCAWLEY: I'm sorry. This is Sigrid McCawley.

21 I was unaware of the 10:00 conference call. I'm
22 sorry.

23 THE COURT: We had a conference call in certain of the
24 other cases with different plaintiffs' counsel where there were
25 somewhat different issues raised.

K5m2FarC

1 MR. MOSKOWITZ: Sure. And I am trying --

2 THE COURT: I'm trying to cluster these so we don't
3 have to have a marathon session with all cases at once.

4 MR. MOSKOWITZ: I am happy to concisely, as best I
5 can, go through the same points, and I will say now that I know
6 Ms. McCawley knows all of the following with perhaps one
7 exception, which I will explain.

8 Ms. McCawley knows that around 69 individual
9 claimants, including her clients, have publicly come forward to
10 voice overwhelming support for the program, including to the
11 USVI probate court. We know that is the vast majority of known
12 claimants. We are aware of only one claimant who is a state
13 court plaintiff who has publicly said that she is not
14 participating, and that was through her counsel, and I don't
15 even know if that's that person's current position.

16 Ms. McCawley also knows that seven plaintiffs in the
17 SDNY action, including one of her clients, Maria Farmer, most
18 recently stayed their actions in favor of the program. It
19 bears mentioning that Maria Farmer's -- you know, the
20 stipulation in that regard goes contrary to everything
21 Ms. McCawley just said.

22 Your Honor entered that order, so I don't think I need
23 to repeat it verbatim. But mentioned in there was the notion
24 of conserving resources, and in that regard, as a side note, it
25 bears mentioning that Boies Schiller has been the biggest

K5m2FarC

1 culprit in driving up the estate's litigation cost, money that
2 will never be available for their clients or other alleged
3 victims in the program. We don't understand that. We were
4 staffed very leanly until recently, just me and an associate.
5 Five attorneys on their side, including three partners. I have
6 lawyers, my colleagues are on now for the team more recently,
7 because Boies Schiller takes the most unreasonable positions on
8 discovery, grossly overbroad view -- again, Mr. Aaronson will
9 get to that -- and they make the most constant threat to motion
10 practice notwithstanding their clients participating in the
11 program.

12 Ms. McCawley also knows that the protocol for the
13 program, which was done in close consultation between the
14 administrator and designers and claimants' counsel, including
15 hers, her firm, and with -- in between co-executors is nearly
16 finalized.

17 And Ms. McCawley also knows the only reason this
18 hasn't gone forward until now was because of the USVI Attorney
19 General. But again, Mr. Edwards announced a couple of days ago
20 in an email that Ms. McCawley is on that that last, quote,
21 lingering issue, as Mr. Edwards put it, is now resolved. And,
22 again, there are a few less contentious matters to iron out,
23 but it is our firm expectation that by sometime next week that
24 resolution in principle will be formalized.

25 The sole thing that Ms. McCawley may not be aware of

K5m2FarC

1 is that if something unexpected happens and that resolution in
2 principle is not finalized, then by June 15, our current intent
3 on the estate side is to move forward with the program absent
4 the probate court entering an order directing us not to or
5 otherwise impeding that, and I don't think that's going to
6 happen because another person who has voiced support for the
7 program is the probate judge who, on February 4, at a hearing
8 that Ms. McCawley attended, as did David Boies, the probate
9 judge said the following: "I think we agreed that everybody
10 believes this program is a great program."

11 So I will say that I don't understand why we get one
12 display of overwhelming support from Boies Schiller and others
13 when we are not before your Honor, and then we come before your
14 Honor and I hear a different story. The program is going to go
15 forward very soon. I am confident of that. And I'm confident
16 that, per Ms. McCawley's own statements, all of her clients,
17 not just the one who stayed her action already, are going to
18 participate. So, again, every dollar we are spending in the
19 meantime is money that will never be available for that
20 program.

21 That's all I have to say on the program aspect.
22 Unless your Honor has questions, I will refer to my colleague,
23 Mr. Aaronson, to address the discovery issues.

24 THE COURT: Let me hear the discovery issues.

25 MR. AARONSON: Good morning, your Honor. Matthew

K5m2FarC

1 Aaronson.

2 I want to correct a couple of misstatements that
3 Ms. McCawley made.

4 It is not the estate's position that documents that
5 relate to the claims asserted by the plaintiffs will not be
6 produced. In fact, all of our discovery responses have
7 identified that to the extent the request seeks information
8 about plaintiffs, they will be produced.

9 We also identified to your Honor in the letter that we
10 sent to you --

11 THE COURT: Hold on. Let me interrupt you. Without
12 regard to time frame or only within a specific time frame?

13 MR. AARONSON: I was about to clarify that. We said
14 in our letter to your Honor without regard to time frame with
15 respect to the plaintiffs. And in fact, that is something
16 that, your Honor, the problem we have here is, we were still
17 under the impression we were meeting and conferring with
18 plaintiffs' counsel on these issues, and we put that in our
19 letter. And before we could even -- you know, we told them we
20 would consider their positions, and before we could even
21 conclude that, they filed a letter with the court. I think you
22 are aware, our initial letter to the court said that we were
23 sort of surprised by that and we are saying it is premature.
24 We still think these issues are premature.

25 But the simple fact is, your Honor, our position is we

K5m2FarC

1 are producing any documents that reference orally to the
2 plaintiffs. And in fact we have searched documents for that.
3 So there is no dispute there, there is no issue there.

4 We are not saying that the time period for documents
5 relating to plaintiff is limited in that way, shape, or form.
6 What we did say was, these are events in some situations,
7 Theresa Helm, incidents that happened on one day in 2002, and
8 we are saying it is not proportional to ask for our client, the
9 estate, to search for documents relating to a 20 -- I guess it
10 would be a 19-year period, your Honor, relating to people who
11 may have worked at a property that Mr. Epstein owned and in
12 fact property that Mr. Epstein -- Ms. Helm doesn't allege she
13 ever visited. You know, it's a scope issue.

14 But, again, to the extent there is an allegation that
15 Ms. Helm -- I'm sorry, there is a document that references
16 Ms. Helm, we have agreed to produce it. We searched for those
17 documents. And the same applies for all of the plaintiffs.

18 So I want to make it very clear that that is a
19 misstatement of what our position is.

20 You know, again, the scope here is just so overbroad,
21 beyond plaintiff, that we think it is not proportional to the
22 case. We disagree completely with Ms. McCawley's statement
23 that any of that discovery is necessary for her to prove her
24 claims. Her claims in this case are a simple claim of battery.
25 That's the claim in this case. That's her burden to prove and

K5m2FarC

1 that is it. And we have agreed to provide documents that
2 relate to her claims. If she says she was at a property on a
3 certain date, we have identified to the best of our ability
4 people who may have been at that property that date.

5 You know, I'm not sure what more we are obligated to
6 do, your Honor. And this is a part of the problem. If they
7 have complaints about search terms, then meet with us to talk
8 about search terms. Before we could finish the process, they
9 ran into court. We are open to a dialogue. We have always
10 been open to a dialogue to try to resolve these issues. But,
11 as we told you, they prematurely went to court to try to -- you
12 know, to try to get in front of your Honor before we could even
13 finish that.

14 We have a lot of requests, your Honor, that are just
15 completely unrelated to these cases. I don't think it's
16 appropriate now to go through each one right now. But I just
17 wanted to clarify that this concept that it is a -- we are not
18 agreeing to produce documents about the plaintiffs is wholly
19 untrue, and I just wanted to make that very clear.

20 THE COURT: Okay. So let me go back on plaintiffs'
21 side. I'm not going to make any blanket ruling, and I'm not
22 persuaded that you have conferred fully in good faith before
23 bringing the motion, in part, because you have already said
24 that some of it is moot because in fact when you got responses,
25 you no longer had a complete absence of information, and now

K5m2FarC

1 you are really just focused on the time frame issue. That
2 tells me that when you wrote the initial letter you hadn't
3 conferred fully in good faith to see what really had to be put
4 before the court.

5 With respect to the time frame issue, it sounds like
6 defendant is prepared to and planning to produce documents
7 without regard to time frame that refer to your clients or
8 relate to your clients, and it also sounds like defendants are
9 willing to confer with respect to other requests.

10 As far as those other requests go, the test for
11 relevance is not whether something is relevant to a general
12 subject matter of a case, it's whether it is relevant to a
13 claim or defense asserted in the case. It may be with respect
14 to some of the requests where time frame is at issue that the
15 documents sought are in fact highly relevant to a defense
16 that's been asserted in the case, for example. It may be that
17 they are tangentially relevant. It may be the burden is great.
18 It may be the burden is modest. It may be that -- let me just
19 make sure I didn't lose counsel.

20 Do I still have plaintiffs' counsel?

21 MS. McCAWLEY: Yes, your Honor.

22 THE COURT: Do I still have defendants' counsel?

23 MR. MOSKOWITZ: Yes, your Honor.

24 THE COURT: Okay. If anyone joined from the public or
25 press, I will please ask you to mute your phone.

K5m2FarC

1 Did anyone join who is an attorney in one of the cases
2 in front of me? No. All right.

3 I lost the thread a little bit of what I was saying,
4 but the point is that if this is in front of me with
5 particularized disputes, I'm going to have to look at each
6 document request at issue or each interrogatory at issue, hear
7 from the parties about the particular relevance to a claim or a
8 defense, hear from the defendant about the particular arguable
9 lack of relevance or burden, and make item-by-item
10 determinations. I'm not going to do it in a blanket fashion,
11 and you are going to have to confer on that kind of level to
12 get it focused for me, if it comes back to me, so that I
13 understand just what the documents are that are being sought,
14 just what the claim of relevance is, just what the purported
15 burden is, just what the proportionality is so that I can make
16 that assessment balancing relevant factors.

17 Now, the other issue that we have is resources and
18 settlement and whether the dollars that are spent by
19 defendants in litigating the case and responding to discovery
20 requests might be better spent by being put into a fund if
21 plaintiffs are planning to participate in that and whether it
22 is a consideration that I should take into account, whether we
23 should have any kind of extended period of time for the
24 responses so that you can see if you are going to participate
25 in the program if the kinks are worked out.

K5m2FarC

1 In the earlier conference we had today, what I did was
2 allow the parties to have a bit of a hiatus in their cases, to
3 conserve resources, asking for a status letter by June 19 with
4 the understanding that the estate was planning to move forward
5 with the program no later than June 15 absent something they
6 thought would be extraordinary to stop it from doing so.

7 So on plaintiffs' side, let me hear whether you think
8 it makes sense to give it a window of time before there is
9 increased attorney's fees spent to see if in fact that program
10 is moving forward and you might be participating in it.

11 And in any event, let me hear what you have to say
12 about my view that perhaps you should be conferring further in
13 good faith about these time frame issues on a
14 request-by-request basis.

15 MS. McCawley: Of course, your Honor. This is Sigrid
16 McCawley for the plaintiff.

17 With respect to the issue of a hiatus, my concern
18 there would be that we, as you know, back in November, talked
19 about this program, and while Mr. Moskowitz has made
20 representations on this call, you will understand that those
21 were the same representations that he was making back in
22 December and January and, for a number of reasons, that program
23 has just not moved forward. Now I'm hearing for the first time
24 this June 15 date that I have not heard before.

25 The problem I see with any kind of hiatus -- and, to

K5m2FarC

1 be clear, we don't want to, of course, expend unnecessary
2 estate resources. The issue that I have with that is it is the
3 continued delay and the part of the disadvantage to my clients
4 in that they don't have information, all of the information
5 they need relevant to their claims because they haven't
6 received -- even though we have tried diligently, they have not
7 received substantial production in the case of any kind.

8 So with respect to a hiatus, my concern would be that
9 right now our discovery deadline is set for early July. We
10 were hoping to get documents in order to be able to start
11 taking some of the necessary depositions to get information for
12 our case to be able to move it forward, and I believe that is
13 something that we would be entitled to. I think that my
14 concern is that, again, it would be a July 15 date, then it
15 would be -- I'm sorry, a June 15 date, then a July 15 date, and
16 it would continue without us being able to move the case
17 forward.

18 Also, as you know, the claims program is voluntary.
19 So to the extent that a client does participate in that and
20 gets paused, we don't know what that claims administration
21 program is going to ultimately prove to be. So to the extent
22 that a client participates and is offered something or not
23 offered anything, their case should be moving forward so that
24 they are able to go to trial on the merits of their claims, if
25 they need to, against the estate. So that would be my concern

K5m2FarC

1 with making any change at this point.

2 Again, we are not -- the discovery, in my view, has
3 moved very, very slowly. So just to pull back and not have
4 them continue to engage with us on discovery, in my view, would
5 be problematic, because it would just further delay the case.

6 So those are my concerns generally with respect to
7 that.

8 And, again, I'm hearing from the other side this June
9 15 date that I have no confidence that that is something that
10 will necessarily move forward because we don't have anything in
11 writing with respect to that or any statement from the court in
12 the USVI that they have approved that or anything of that
13 nature. So that was my concern there.

14 With respect to the issue before the court, we are in
15 a position where the time frame issue is significantly
16 problematic to us for the reasons that I have outlined. While
17 they are representing to the court today that they will produce
18 documents related to the plaintiff, you will remember that we
19 have --

20 THE COURT: What did they say in their responses that
21 you got in? Did they say these documents will be produced or
22 is it just they are saying this for the first time to the court
23 today?

24 MS. McCAWLEY: With respect to the plaintiff, they
25 represented they would run the name of the plaintiff in their

K5m2FarC

1 discovery searches and produce with respect to the plaintiff,
2 yes, that they did.

3 THE COURT: Why --

4 MS.McCAWLEY: But the problem --

5 THE COURT: Why did you tell me earlier on in the call
6 that they were refusing to produce any documents for the later
7 time frame even with regard to the plaintiff?

8 MS.McCAWLEY: That is my understanding of their
9 position, your Honor. I am hearing now that they are saying --
10 well, first of all, they have only produced one document for
11 Theresa Helm's case, one document for Jane Doe's case.

12 THE COURT: Wait a minute, wait a minute. This is
13 complete lack of meaningful dialogue between the parties,
14 because I'm hearing opposite things from the parties about what
15 defendants' position is. Defendant, as I understand it from
16 this call, has said that they will, and have told you that they
17 will, produce documents regardless of time frame if they refer
18 or relate to the plaintiff, and that they are doing that in
19 fact in all cases and have not taken a position that they would
20 not. And you are saying that is your understanding of their
21 position, that they will not.

22 How can that be if you have had a good conference
23 between you?

24 MS. McCawley: Your Honor, as we set forth in our
25 letter, we did have a two-hour conference where we asked them

K5m2FarC

1 about the time frame issues and made sure to get the full
2 position on that because that was our biggest concern. And
3 that is what we discretely presented to the court because that
4 was the concern we have, that they were not going to be
5 producing anything beyond the time period of the abuse.

6 (Indiscernible crosstalk)

7 THE COURT: -- discretely presented to the court. You
8 presented to the court in your opening letter that there was a
9 complete failure to respond to any of the requests, and now you
10 tell me on the call that since then there has been a response,
11 and so what is now being discretely presented on this telephone
12 call is what you say is a remaining issue, which seems like it
13 is only a remaining issue in part because it seemed like if
14 there are documents specifically relating or referring to the
15 plaintiff, defendants have agreed to produce it and according
16 to defendants have told you they have agreed to produce it in
17 their responses that you have since gotten. Now, I haven't
18 seen those responses. If they have been put before me, I'm
19 sorry, I have not reviewed them. I don't think I have them.
20 For that matter, I'm not sure I have all of the requests, I'm
21 not sure I have an item-by-item explanation of relevance, and
22 I'm not sure that your discussion has been adequate between the
23 lawyers.

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

K5m2FarC

1 I appreciate that. I am hearing your Honor. We will
2 go back and address these issues again with the defendants in
3 the hopes of being able to resolve them and not hopefully have
4 to come before the court with respect to them. We are, again,
5 hopeful to be able to get discovery in this case. We do not
6 believe that has been the situation that we are in presently,
7 and that's why we have presented it to the court. But I
8 understand your point, your Honor, and we will make sure to
9 engage further in the hopes of being able to resolve this.

10 THE COURT: All right. Let me ask, on defendants'
11 side, by when do you plan to produce -- assuming we have no
12 stay of discovery here and no hiatus, by when do you plan to
13 produce the documents referring or relating to plaintiff?

14 MR. MOSKOWITZ: We have already started that, your
15 Honor. Bennet Moskowitz, excuse me. And in fact, I apologize.
16 Let me let Mr. Aaronson address that question. And then, if I
17 can, I would like to just very quickly respond to something
18 Ms. McCawley said about the program.

19 THE COURT: Let me hear first about the documents --

20 MR. AARONSON: Yes --

21 THE COURT: -- regarding the production.

22 MR. AARONSON: Yes, your Honor. Matthew Aaronson.

23 We have already started the production. We made a
24 production I believe on Wednesday of documents, and I think in
25 particular Ms. Bryant it was over 100 documents.

K5m2FarC

1 So with the process underway -- and, again, I think,
2 your Honor, you have gotten this correct, is that we have told
3 them that we will produce and search for -- search for and
4 produce documents that relate to their clients. To the extent
5 that they think we need to add additional search terms, we
6 searched the individual plaintiffs' names. If there are
7 additional search terms, we are open to a dialogue to discuss
8 that. If there are additional terms, as in every case, whether
9 or not we can reach agreements on those terms. You know, the
10 thing --

11 THE COURT: I would like to put a deadline on getting
12 the production complete with respect to any documents that in
13 any way refer or relate to the plaintiffs after you have had
14 some further discussion perhaps on search terms, if necessary.
15 But I would like to have a firm date when you are not just
16 producing a few documents and a few documents and say it is
17 underway, that that actually gets produced. Once --

18 MR. AARONSON: That's fair, your Honor. Part of that
19 goes back to the same issue you raised earlier about the
20 expenditure of time and money on discovery issues versus
21 putting it towards the program.

22 So to the extent the court is not inclined to issue a
23 pause or some sort of temporary issue on that, it's hard to
24 say. The problem we have is that, you know, it is difficult to
25 search all of our files, given the pandemic. Some files have

K5m2FarC

1 not been able to be collected yet. So I can tell you that, of
2 the electronic documents that we have collected, I think we can
3 keep that probably within 30 days of what we have collected
4 already.

5 But I will tell you, we have done the initial pass of
6 that, and we have made those productions. As I said, Juliette
7 Bryant there was a significant number of documents. Presumably
8 other plaintiffs there were not. So, again, we do believe that
9 it would be appropriate (unintelligible) some of this, but to
10 the extent the court is not inclined to do that, you know, I
11 think 30 days for what we have. But to be clear, your Honor, I
12 don't know that we have collected every, you know, source at
13 this point in time, given our inability to collect documents
14 dues to the pandemic.

15 THE COURT: How has the pandemic affected your ability
16 to collect documents specifically?

17 MR. AARONSON: I will let Mr. Moskowitz speak to that,
18 but my understanding is, you know, that we have not been able
19 to access and people are not traveling to different locations.
20 So we have collected electronic documents. I'm not -- again,
21 I'm deferring to Mr. Moskowitz on that, whether or not the
22 additional documents are still out there.

23 MR. MOSKOWITZ: Yes. Bennet Moskowitz. Happy to
24 clarify that point, your Honor.

25 There are two -- let me take a step back. Yes. It is

K5m2FarC

1 true that we have collected over 700 and I think 40,000
2 documents, and we did search them for the plaintiffs' names.
3 And we did produce what we found that wasn't privileged, and we
4 will go back and make sure that that is complete. But the fact
5 that we located many documents for Juliette Bryant, which were
6 dated to as late as I believe last year and have already been
7 produced, so I don't understand Ms. McCawley's confusion about
8 the time frame issue. But in any event, the fact that we found
9 those but didn't find such documents for the other cases just
10 evidences a lack of documents, not something wrong with the
11 search process.

12 In terms of the pandemic difficulties, my problem with
13 making a 30-day blanket representation is that there are at
14 least some hard copy files that I would like certain people to
15 look through, and while I have no reason one way or the other
16 to expect their responsive materials are there, I would like
17 that to happen before such deadline, and I'm not 100 percent
18 certain that it can, because at least some of the documents are
19 in places that are still under lockdown or there are still
20 health concerns.

21 In addition to that, this is somewhat subject to the
22 disputes about the scope of the discovery. If Ms. McCawley is,
23 let's say, correct and these cases -- everything related to any
24 allegedly bad thing Mr. Epstein ever did is relevant in each
25 action, well, then, it could take me, you know, six months or a

K5m2FarC

1 year to finish looking for every piece of paper and every
2 property Mr. Epstein owned. So, again, it's with the context
3 of just searching for names. Mr. Aaronson is correct, that can
4 be done in the next 30 days, with the exception of anything
5 that we can't actually access to look through.

6 And again I have --

7 THE COURT: You have already --

8 MR. MOSKOWITZ: Yes.

9 THE COURT: You already have the documents
10 electronically, at least certain of the documents, most of the
11 documents.

12 MR. MOSKOWITZ: Yes.

13 THE COURT: And you have already gone through them and
14 you have already made some production. Why would you need
15 another 30 days before you can get to the end of that
16 particular road?

17 MR. MOSKOWITZ: We may not. It really depends on the
18 rest of the meet-and-confer process which never completed. It
19 depends on the search terms that are proposed, whether there
20 are any additional search terms proposed. For example, what we
21 wanted to happen during a full meet-and-confer process, which
22 is what we strive to do in every case, and what we are actually
23 doing in other actions against the estate, that Boies Schiller
24 is not involved with, is suggest search terms to us that you
25 think would satisfy your view of what a particular request

K5m2FarC

1 entails, let us run the report. If the report comes back and
2 says 500 documents or even a thousand, we may deem that
3 reasonable for that request. If it comes back at 10,000, we
4 may not deem that reasonable.

5 So this is part of what an ongoing discussion, I hope,
6 would have entailed, which gives me pause to, again, say a
7 blanket yes, we will get it all done in 30 days. As to
8 searching for things, I mentioned the plaintiffs in what we
9 have already collected, to the extent we didn't complete that,
10 you know, we don't need 30 days. But I don't know that that
11 will satisfy Ms. McCawley.

12 THE COURT: Okay.

13 If this case goes all the way forward in litigation
14 and goes to trial, you are going to try this case. You are not
15 going to try ever case that is before this court or any other
16 court at the same trial. That doesn't mean that evidence
17 regarding others who are claiming to have been victims of
18 Mr. Epstein might not have relevance to some claim or defenses
19 being raised, and I understand that it may, in some documents,
20 may have relevance.

21 But you are going to have to get, on plaintiffs' side,
22 a lot more focused with what you want and why you want it. And
23 if you are going to come back and make a renewed application to
24 me, that application is going to have to be more focused on
25 what kind of documents you are talking about, what claim or

K5m2FarC

1 defense they are relevant to, why they are relevant to that
2 claim or defense, giving me an example of some case law that
3 shows how it could be relevant, and I will make a decision on a
4 request-by-request basis about what appropriate time frames
5 should be used. And with respect to search terms, in the first
6 instance you need to talk to each other about that because you
7 don't want the court coming up with search terms or trying to
8 make judgment calls on that if it's not necessary. You know,
9 you are much better off trying to figure it out between you,
10 getting an agreed protocol, an agreed list of custodians, an
11 agreed list of search terms, and then go from there, as
12 generally happens in cases where there might be a lot of
13 documents that are kept electronically. So I expect you to go
14 through that process as you would in any other case.

15 I am open to kicking out your deadlines a bit to give
16 you time to talk this through and to see if we can get some
17 progress. I'm going to ask defendants, to the extent you
18 already have a known universe of documents, if there are any
19 you have not yet produced, get them produced within two weeks.
20 If there are additional search terms, you will talk with each
21 other in good faith about time frame for running any additional
22 searches and getting any additional documents produced. And if
23 plaintiff wanted to come back to me on a renewed motion that's
24 more specifically laid out on particular categories of
25 documents or responses to interrogatories, you will do that

K5m2FarC

1 after you have tried to work these things through with an eye
2 toward what is what is reasonable. Plaintiff may reasonably
3 need more than defendants want to give. Defendants may have a
4 reasonable point about conserving resources for the sake of a
5 settlement program which should be taken seriously because it
6 seems that very serious efforts are underway to try to get that
7 program off the ground.

8 I'm going to ask for a status letter by June 19, which
9 is the date that I gave in other cases. It is geared to
10 Mr. Moskowitz's representation that this program should launch,
11 he thinks, by June 15. So it seems to me by June 19 you will
12 have a better idea and you will also have a better idea of
13 where you are with respect to these discovery issues.

14 I'm going to caution plaintiffs' counsel in the
15 future, please do not send me something without being sure you
16 are at the end of the road in talking to your adversary. I
17 don't want to get a response that says it is premature, we
18 haven't really talked. Make sure you are clear on a
19 point-by-point basis that you have talked about specific
20 relevance, that you have talked about specific burden issues,
21 that you have talked about specific search terms, at least you
22 have try to engage in that kind of dialogue. If you are
23 stymied, you are stymied, and I will hear from you. But I
24 don't think you are at that point.

25 And I think that's it with respect to those disputes,

K5m2FarC

1 and I should probably turn to the dispute regarding
2 Ms. Maxwell. What I am going to do is I am going to -- I don't
3 know if the letters were framed as a motion for a conference or
4 a motion to compel. If they were framed as a motion for a
5 conference, I will say granted. We had a conference. As to
6 the underlying issue about compelling, go talk or in if
7 actually framed as a motion, I will say denied without
8 prejudice to renew, and I'm going to ask for a status letter by
9 June 19.

10 Anybody want to say anything else on that before I
11 turn to Ms. Maxwell's issue?

12 No? Okay. I'm hearing no, or I am hearing nothing.
13 Hopefully I haven't lost everybody on the entire call. I'm
14 hearing laughs, so hopefully that means not.

15 Let me turn to Ms. Menninger's issue. One thing I
16 want to understand, because there was a reference to a
17 potential criminal prosecution which of course could impact
18 whether there should be a stay as to a defendant who is being
19 criminally prosecuted. Currently, if I'm understanding
20 correctly, Ms. Maxwell may be the target of an investigation,
21 or you may be concerned she is the target of an investigation
22 but there are no actual criminal charges pending, is that
23 right?

24 MS. MENNINGER: Yes, that's correct, your Honor. We
25 do not have any criminal charges pending anywhere, but we have

K5m2FarC

1 a number of public statements by the U.S. Attorney's office in
2 the Southern District, as well as statements made by
3 plaintiffs' counsel to the press that suggest that those --
4 that that investigation is underway and that it would encompass
5 Ms. Maxwell, and so that is our concern. But it is correct to
6 say that there is no active criminal charges that I am aware
7 of.

8 THE COURT: All right. So if there were active
9 criminal charges filed or if that should happen, that might
10 influence the thinking about whether or not there should be a
11 stay, because of course if a defendant ends up taking the
12 Fifth, that could have consequences in a civil case and
13 defendant may feel there is little choice but to do that if the
14 person is under a criminal indictment or if plaintiffs have
15 filed.

16 So I just want to just note that if that circumstance
17 change -- if that circumstance changes, let me know. If it
18 affects any ruling I make, let me know, because I may need to
19 revisit a ruling.

20 Let me hear what -- given the last conference, the
21 last subject, where there seem to be some changed landscapes
22 since the application was initially made, let me make sure that
23 I am aware of the current circumstance.

24 Let me just hear from Ms. Maxwell's counsel first on
25 this.

K5m2FarC

1 MS. MENNINGER: Thank you, your Honor, Ms. Menninger
2 here on behalf of Ms. Maxwell.

3 The landscape has not changed since our letters. We
4 have filed a motion to dismiss the claims which we believe are
5 distinct and different from any sort of example that the estate
6 may have, and we believe that they are strong grounds for
7 dismissal. The case -- the allegations against Ms. Maxwell in
8 this case involve an allegation of battery that occurred one
9 time in 1996 in New Mexico, and the statute of limitations and
10 venue issues, you know, in New York versus New Mexico are very
11 different for Maxwell than perhaps for the estate and we think
12 provide the grounds for dismissal.

13 The other two bases that we raise for a stay are the
14 claims program that your Honor has already spent some time
15 discussing on this call and the earlier call today. We
16 believe -- we don't have any independent information. We were
17 not party to the calls in the Virgin Islands, as were counsel
18 for plaintiffs and for the estate. But I have heard on the
19 call today the representations made by the estate that they
20 believe that the program will be getting off the ground in a
21 matter of a few weeks, June 15, or three weeks or so from
22 today.

23 Given that plaintiff has indicated an intent to
24 participate in that program, at least in filings in the Virgin
25 Islands, and the fact that that program would -- if she

K5m2FarC

1 participates and it is successful, would render this entire
2 lawsuit moot, we think we believe balancing that fact against
3 the extremely broad discovery demands that your Honor has heard
4 something about, although not with respect to Ms. Maxwell yet,
5 would counsel in favor of at least a short stay similar to the
6 ones that other plaintiffs' counsel have agreed to, promoted,
7 or even stipulated to in other cases pending before your Honor.

8 We have received extensive discovery demands. We have
9 been advised that plaintiffs' counsel intends to take a number
10 of depositions, including around the country, including for
11 people that plaintiff in our case never met and had no dealings
12 with. And, your Honor, I can speak from personal experience
13 with that same type of discovery happening with the same
14 plaintiffs' counsel in the *Giuffre v. Maxwell* action that I was
15 counsel for in front of Judge Sweet. We had a number of
16 significant discovery disputes in that case and we had
17 depositions that occurred not only across the country, from
18 California to New York and Florida and many places in between,
19 but also abroad in that case, and the litigation costs were in
20 the hundreds of thousands easily in that case. And so looking
21 at the pattern of discovery that I believe plaintiff intends to
22 pursue here, balancing the costs of those to someone like my
23 client, who is not a multimillionaire, and then viewing the
24 claims program as something that could be successful in
25 resolving this case in a short period of time, we would ask

K5m2FarC

1 your Honor to consider putting a stay on discovery in the
2 Farmer case that I am party to, or I am counsel for a party to.

3 I think I can second or third some of the things that
4 have already been said earlier, so I don't want to waste the
5 court's time with those. But we have concerns that any money
6 spent on this litigation is going to reduce the amount of money
7 that would be available to any of the accusers in the Virgin
8 Islands, and we don't think it makes sense to spend the money
9 on these broad discovery requests if we can get the case
10 resolved shortly.

11 I think the only objection that I heard from
12 plaintiffs' counsel to something like a hiatus was that there's
13 a pending discovery cutoff of early July, and it seems to me
14 reasonable that of course if the claims program gets off the
15 ground in a few weeks, that discovery cutoff could be set out
16 to see if it is successful or not. And so it is sort of a
17 false premise to say that the discovery cutoff in July is the
18 reason we should be forging ahead full steam with this
19 expensive discovery, rather than just taking the more logical
20 approach, to me, which would be to at least put it on hold to
21 see if the claims program is successful in the first instance;
22 and, if not, then the cases can proceed with the court's
23 blessing, pick back up where we left off.

24 In this particular case, I think it also bears noting
25 that the claim allegedly occurred in 1996, so it has been some

K5m2FarC

1 24 years since the allegations supposedly happened, and so I
2 don't see that waiting one or two or three months balanced
3 against 24 years is -- it's not as though we think documents
4 will go missing in those three months that weren't already
5 somehow lost to the winds of time over the last 24 years, your
6 Honor.

7 THE COURT: So you are -- I will just note, by the
8 way, that in your initial letter you ask for an opportunity to
9 do full briefing, but it is all laid out in the letters. So
10 let me just get some clarification on that. What more briefing
11 would you be looking to do beyond what's in these letters? You
12 have case citations in these letters and you lay out the bases
13 for a stay. What would you be looking to do when you are
14 trying to conserve resources? Do you really need full
15 briefing.

16 MS. MENNINGER: I think it could be abbreviated
17 briefing; but, yes, there are more cases in support of the
18 request that we are making. There are more cases in terms of
19 the criminal investigation versus active prosecution, and then
20 there is certainly a fair amount of exhibits that I could
21 tender to your Honor to display the breadth of discovery that
22 is part of the traditional balancing test when looking at a
23 motion to stay -- or good cause -- of grounds for good cause as
24 balanced against the breadth of discovery.

25 THE COURT: I don't remember if at the beginning of

K5m2FarC

1 this call I asked if my law clerk Hanna Martin was on. Hanna,
2 are you there?

3 MS. MARTIN: Yes, I'm here, Judge.

4 THE COURT: Okay. Well, for the court reporter, it is
5 Hanna Martin, H-A-N-N-A.

6 And Hanna and I were conferring before this conference
7 about some case law about some criminal prosecution as opposed
8 to criminal investigation, and we weren't finding, at least on
9 an initial look, cases where the courts tended to stay civil
10 proceedings when there was an investigation proceeding. You
11 have cases that say the opposite?

12 MS. MENNINGER: Your Honor, I have some. They are not
13 in the Southern District, so there are --

14 THE COURT: Okay.

15 MS. MENNINGER: -- cases that have occurred in various
16 federal and state cases across the country.

17 THE COURT: And you are looking for a stay of the
18 entire case, not just as to proceedings against your client?

19 MS. MENNINGER: Your Honor, it seems to me best to
20 stay the case, but I would be amenable just in regards to my
21 client or, as I said towards the end of my letter, there are
22 other alternatives that, you know, I think I would view as
23 intermediate steps, for example, bifurcation of discovery on
24 the statute of limitations issue, for example, if that were
25 something the court thought were appropriate or a stay on party

K5m2FarC

1 depositions until later in the discovery process to see where
2 the claims program and the criminal investigation end up, and
3 certainly with regard to the motion to dismiss, that should be,
4 I would think, decided at some point.

5 THE COURT: I might consider, because there is a lot
6 to do in this case, I might consider putting a hold on
7 Ms. Maxwell having to make statements, so either responding to
8 substantive interrogatories or being deposed because of Fifth
9 Amendment issues, because it may be that she ends up the
10 subject of prosecution even if she is not yet and because there
11 are other things that can meanwhile be going forward. If we
12 put her deposition further down the pike, maybe we will have
13 greater clarity on that before that issue actually comes to the
14 fore.

15 I'm also thinking that there are other interests
16 besides hers in this case. There are plaintiffs' interests and
17 I'm sure that although your point is well taken that it's not
18 that likely that documents will now not be preserved within
19 these few months as opposed to not being preserved over the
20 years, I'm sure plaintiff does not want to hear that after all
21 of these years she must wait more time in order to have what
22 she considers to be serious wrongs redressed. So the factors
23 can cut in more than one direction.

24 So right now I'm not inclined to stay the whole case,
25 but I am inclined to keep one eye on settlement, to keep one

K5m2FarC

1 eye -- I'm not sure how many eyes I have -- to keep an eye on
2 the -- any criminal investigation and ask to have updates if
3 there are charges filed, and maybe put some things more at the
4 front end of the discovery period, some things more at the back
5 end of the discovery period. And I am willing to move the
6 dates out some to accommodate the parties if the parties are
7 engaged in good-faith discussions, if there is a desire to
8 conserve resources because it looks like the claims program is
9 in fact going forward. I am willing to do that. I have done
10 that another cases. I have stayed other cases. I have
11 extended deadlines in other cases. I don't really want to see
12 resources going to litigation if it's not necessary. But right
13 now I'm not inclined to have a complete stay of everything.

14 Ms. Menninger, what would be your reaction to saying
15 hold off on anything that could be in the category of
16 affirmative statements made by Ms. Maxwell for now and having
17 other discovery going forward?

18 MS. MENNINGER: It does address -- this is
19 Ms. Menninger, again, Laura Menninger.

20 It does address many of my concerns. I would say, you
21 know, the costs related to the broad discovery demands that
22 were propounded, written discovery requests and the like, are
23 still of concern to me. As I mentioned, we have been asked for
24 every calendar she has had for the last 24 years and every
25 Amazon account she has ever used for the last 24 years. So

K5m2FarC

1 I --

2 THE COURT: That sounds to me, again, like you need to
3 have a discussion with plaintiffs' counsel and, plaintiffs'
4 counsel, it sounds like you need to have a discussion with
5 Ms. Menninger about what you really need, why you really need
6 it, how it can be done in a way that's manageable with no
7 absolute yeses and no absolute nos with respect to those sorts
8 of requests.

9 It may be that there is something about Amazon
10 accounts that's really critical, and you can explain that. And
11 maybe there is something else that's not really critical, and
12 you can, you know, bend a bit on it. So you need to have that
13 kind of discussion to keep, you know -- you know, to keep
14 discovery tailored to the case and proportionate to the needs
15 of the case. That has to do with time frame, that has to do
16 with the scope of what's being claimed in a particular case,
17 and to some extent it has to do with Mr. Epstein's accused
18 conduct over time. So you are going to have to try to have
19 that conversation and try to balance it. And if you can't,
20 then I will.

21 MS. MENNINGER: I appreciate that, your Honor.

22 MS. McCAWLEY: Your Honor, this is --

23 THE COURT: Yes.

24 MS. McCAWLEY: I'm sorry. This is Ms. McCawley. Can
25 I address --

K5m2FarC

1 THE COURT: Absolutely.

2 MS. McCAWLEY: Thank you.

3 THE COURT: Please go ahead.

4 MS. McCAWLEY: With respect to the motion to stay that
5 Ms. Maxwell is proposing, one of the bases that she has filed
6 motion to dismiss, Judge Schofield held a premotion conference
7 with respect to that --

8 THE COURT: Hold on a moment, please. Do I still
9 have -- do I still have -- I know I still have Ms. McCawley.
10 Do I still have Ms. Menninger?

11 MS. MENNINGER: Yes, your Honor.

12 THE COURT: Do I still have Mr. Moskowitz?

13 MR. MOSKOWITZ: Yes, your Honor.

14 THE COURT: Did anyone join us who is another
15 attorney? Okay. Hopefully we didn't lose anybody. If anyone
16 joined from the public or press, welcome. Please keep your
17 phone on mute.

18 Okay. Go ahead. You were saying, Ms. McCawley?

19 MS. McCAWLEY: Yes. So we did hold in front of
20 Judge Schofield a premotion conference on Ms. Maxwell's motion
21 to dismiss. As Judge Schofield did with the estate, she
22 discouraged Ms. Maxwell from filing a motion to dismiss, giving
23 her preliminary views that they -- the arguments that she was
24 putting forth were not meritorious. Ms. Maxwell insisted on
25 filing a motion to dismiss and has done that now, just this

K5m2FarC

1 week. So in my view, that is -- bodes against any sort of stay
2 based on the motion to dismiss because the district judge has
3 set forth her views with respect to that at least as an initial
4 matter.

5 With respect to the case law, your Honor is correct,
6 the case law in New York is clear that unless there is an
7 indictment put forward, which there has not been, it doesn't
8 allow somebody in a civil case to stay the case on the basis of
9 a possible investigation.

10 With respect to your Honor's statements about the
11 investigation and potentially allowing Ms. Maxwell to not have
12 to make statements in this civil action, the concern I have
13 there is that we have no indication of any time frame with
14 respect to the Southern District of New York, how long that
15 investigation could go on or will go on or anything of that
16 nature. So the concern, for me, is Ms. Maxwell, as we have
17 alleged, worked in concert with Mr. Epstein to abuse my client.
18 We brought those claims under the Child Victims Act, as we are
19 allowed to do, because she was a minor, and to not be able to
20 get a discovery and ask Ms. Maxwell questions and get responses
21 and keep the case moving forward puts us in handcuffs with
22 respect to being able to establish our claims because, as your
23 Honor has seen from the complaint, the allegations are that
24 they worked together hand in hand with respect to the abuse of
25 Annie Farmer. So I would have concerns about some form of that

K5m2FarC

1 kind of a path for defendant Maxwell in the case at this time
2 until there is a criminal indictment that's put forward.

3 THE COURT: All right. Let me just say a few things
4 about that.

5 First of all, if the investigation is going on here in
6 New York, or for that matter wherever it may be going on,
7 because what we have in New York is not only in New York with
8 respect to COVID-19, the grand jury process is understandably
9 delayed because it is very difficult to have jurors convene.
10 So there may be additional time before any case that is being
11 investigated is indicted, and so we just have to recognize that
12 we are in somewhat unusual circumstances.

13 The second thing is that any stay that I might put in
14 place with respect to any aspect of the claims against
15 Ms. Maxwell would be temporary and would be revisited. I would
16 not allow it to drag on indefinitely. But in a case where some
17 things can be done to move the case forward and the case is not
18 completely stalled, I don't see any harm in putting some things
19 a little bit further down the road.

20 The third thing I will say is this is also an unusual
21 circumstance because of the potential of this claims process in
22 which plaintiff may well participate and which may well get off
23 the ground soon; and, if it does, I'm not sure whether it would
24 moot claims against Ms. Maxwell or not, but it might. And as
25 you balance those factors, you have this situation where we may

K5m2FarC

1 know in the relatively near future whether plaintiff is
2 actively participating in the claims process, whether it looks
3 like it is going to resolve her claims, and we may never have
4 to get to the point where we jeopardize, potentially jeopardize
5 somebody's Fifth Amendment rights.

6 So I might be inclined to do this, to say, look, you
7 can carry on with discovery in the case after a conference on
8 all kinds of things, to try to keep costs under control and try
9 to focus on what's most important. I will extend deadlines out
10 if you would like if you are feeling pressure from that. We
11 will hold off on -- not on production of documents from
12 Ms. Maxwell but on the statements that she makes, whether sworn
13 statements or interrogatories or deposition, we will put that a
14 little bit further down. You will give me status report
15 regarding the process of settlement, and we will take stock.

16 And with respect to holding off on interrogatory
17 responses or deposition by Ms. Maxwell, that will not be a
18 permanent situation, that will be revisited. And if time is
19 stretching out too far and if there is no indictment, then I
20 may take further briefing on the subject and I will make a
21 decision as to whether in fact that part of the case should
22 also go forward. But I will not let it drag out indefinitely.
23 That is my current thinking.

24 What say both of you on that?

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

K5m2FarC

1 That would be -- we would welcome that ruling, your Honor.

2 THE COURT: Plaintiff?

3 MS. McCawley: Your Honor, obviously we disagree with
4 that because we believe that it's important to have
5 Ms. Maxwell's participation in this case. We have noticed her
6 for a deposition already and that got moved because she -- you
7 know, the issue of just being able to be in person, things of
8 that nature. We were trying to accommodate. So we are
9 concerned about there being extended delay and are concerned
10 about not being able to get information from her through her
11 testimony.

12 We respect the court's concerns about a Fifth
13 Amendment privilege but, again, we would ask that if you are
14 going to be inclined to do something like this, you tie it to a
15 date like the June 15 date, or something along those lines, so
16 that we are not in a position where she is able to take
17 depositions of all of our people and we are, you know,
18 handcuffed with respect to any discovery with respect to
19 Ms. Maxwell.

20 THE COURT: Like I said, I have no desire to have this
21 drag out. If all things -- if we didn't have this potential
22 claim process out there with a fairly soon, seemingly likely,
23 start date, according to defendants, then I think the balance
24 would be different. Because I don't think the case law in this
25 circuit would generally support the stay when there is no

K5m2FarC

1 prosecution pending yet.

2 But nonetheless, there are a number of factors one
3 might look at on that, and whether or not an indictment is
4 pending is only one of the factors. There are several factors
5 that could be relevant, including, and I'm going to refer you
6 to the *Louis Vuitton Malletier* case. For the court reporter,
7 L-O-U-I-S V-U-I-T-T-O-N M-A-L-L-E-T-I-E-R v. Ly, L-Y, U.S.A.,
8 Inc., and the case number is 676 F.3d 83 from 2011. So the
9 Second Circuit noted that courts often take a look at a number
10 of factors in deciding whether there should be a stay,
11 including the extent to which the issues in the criminal case
12 overlap with those presented in the civil case. Here, there
13 would be, I assume, a very strong overlap to the status of the
14 case, including whether the defendants have been indicted. So
15 that's a factor.

16 Three, the private interests of the plaintiff in
17 proceeding expeditiously weighed against the prejudice to
18 plaintiffs caused by the delay. Here I'm looking at the
19 potential settlement process and that, to me, is an unusual
20 factor that suggests that the plaintiffs' interests may be
21 divided here in proceeding fast with this case when there is a
22 potential settlement within the next few months potentially
23 available to plaintiffs and plaintiff may go for that.

24 Another factor is the private interest of and burden
25 on the defendants. We do have an individual here. We are not

K5m2FarC

1 talking about the estate, and there is somewhat more burden for
2 discovery.

3 There are the interests of the courts. The interest
4 of the court is not to have unnecessary litigation if the
5 matters can be resolved amicably, and not to have it stretch
6 out forever. That's also an interest of the court.

7 We also have this strange overlay of COVID-19 which
8 affects the ability for criminal prosecutors to take matters to
9 a grand jury.

10 The public interest, I think the public interest is --
11 would be well served by a claims process. If you look at this
12 case in terms of there being a number of claim victims, and
13 that is something that I definitely am looking at and is
14 weighing into my consideration as to how any and all of these
15 cases should be litigated. And in several of the cases, which
16 claims that are no more recent than the claims here, a lot of
17 plaintiffs' counsel have agreed to stays or partial stays or
18 are holding off on certain things to conserve resources and
19 allow that process to play out a bit, and I think that those
20 are factors that are unusual in this case. This is a
21 case-by-case, specific analysis that has to be made as to
22 whether there should be a stay.

23 So in this particular case, at this particular time,
24 with these particular circumstances, it seems to me to make
25 sense not to stay the case in its entirety, to send counsel

K5m2FarC

1 off to have the kind of good-faith conference you should have
2 had before contacting me in the first place and that you should
3 always have about anything and everything as you try to work
4 through discovery issues, but to hold off on the most serious
5 of the issues with respect to Ms. Maxwell, which are her
6 constitutional rights, and not forever, but at least long
7 enough to let us know whether the claims process is likely to
8 go forward. And I will revisit it, and I will revisit it at
9 intervals that are reasonable and that does not put you in
10 limbo where you will never be able to get discovery from
11 Ms. Maxwell if this case proceeds. All right?

12 So let me ask straight out, are you, under the
13 circumstances I have described and the way in which I would
14 envision this, which is some discovery going forward,
15 good-faith conference, report to me by June 19 about the
16 status, are you looking to have me move out the discovery
17 schedules at all and, if so, by how long?

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

19 Would it be possible to have some time to consider
20 that? Right now the discovery deadline is set for July 10, I
21 believe, and I of course have anticipated taking depositions
22 throughout June and into early July. So if I could have some
23 time to consider what that would look like and confer with the
24 other side, then if we can't agree, then maybe present
25 something to the court with the timing of that?

K5m2FarC

1 THE COURT: Yeah. I mean, I'm not usually in the
2 habit of suggesting extensions, but I think here, rather than
3 be crunched with depositions and panicking at the end of June
4 and beginning of July, putting another 30 days on it to give
5 you time to talk through your issues and for me to have fuller
6 briefing on the issue of a stay, should it come to that, it
7 might make sense to at least give you another 30.

8 MS. McCAWLEY: That would be fine, your Honor.

9 THE COURT: Mr. Moskowitz, do you want to say
10 anything?

11 MS. McCAWLEY: Just very quickly, your Honor.

12 That 30-day initial extension for the further
13 discussion makes perfect sense to us. I would say you laid
14 out -- your Honor laid out very compelling reasons, one of
15 which is unique to this action, but the others equally apply to
16 the other actions that we are here now before you on, so I
17 would hope that we could also discuss with Ms. McCawley keeping
18 the extensions in line for each case with those other
19 considerations in mind. It's something we will discuss.

20 The only other thing I wanted to mention is -- which I
21 didn't get a chance to mention earlier is that Ms. McCawley
22 mentioned various concerns about the program. That could be
23 more convincing from someone but for the fact that they already
24 stayed one of their clients' actions in favor of the program.
25 So I just don't -- it doesn't square with us that those

K5m2FarC

1 concerns are such that they can't take the same reasoned
2 approach in the other actions when they found it reasonable for
3 one of them already.

4 But other than that, I have nothing to add, your
5 Honor.

6 THE COURT: Okay. So I'm going to ask for a status
7 report by June 19. In that status report, I not only want to
8 hear about how discovery is going and how settlement prospects
9 are looking. I also want to hear about further discussions
10 with counsel for Ms. Maxwell and mapping out of how the parties
11 would anticipate things moving further from that point, and,
12 you know, Ms. Maxwell permitting not to respond to
13 interrogatories and not to have her deposition until the
14 parties have had a chance to confer, until I have had that
15 status report June 19, until I hear again from counsel as to
16 the next logical way to proceed with that, and I will kick out
17 discovery deadlines 30 days, which is modest. Others, I think,
18 are going to be kicked out longer. You can do whatever
19 planning you do for depositions to be happening a little
20 further down the road in July, and you will get back to me. As
21 need be, we will have another conference and we will take in
22 the next piece. Okay?

23 MS. McCAWLEY: Thank you, your Honor.

24 THE COURT: All right. Anything else --

25 MS. MENNINGER: Thank you, your Honor.

K5m2FarC

1 THE COURT: -- before we end this call?

2 All right. Let me just say one last thing, which is,
3 I did record this call into the conferencing system, but you
4 also have a court reporter on the call. You don't need to have
5 a transcript made from the telephone recording. And just be
6 aware that if there are two transcripts made -- one from AT&T
7 and one from the court reporter -- and there is any
8 discrepancy, the court reporter's transcript will be the
9 official transcript and will control. Okay?

10 MS. McCAWLEY: Thank you, your Honor.

11 MR. MOSKOWITZ: Thank you, your Honor.

12 THE COURT: All right. Thank you all. Take care,
13 everybody.

14 oOo

15

16

17

18

19

20

21

22

23

24

25