

From: "[REDACTED]" <[REDACTED]>
To: Laura Menninger <[REDACTED]>
Cc: "[REDACTED] (USANYS)" <[REDACTED]>, "[REDACTED]" <[REDACTED]>, "[REDACTED]" <[REDACTED]>, Jeff Pagliuca <[REDACTED]>, "[REDACTED]" <[REDACTED]>, Bobbi Sternheim <[REDACTED]>

Subject: RE: US v. Maxwell - [conferral re photo and other discovery deficiencies]

Date: Wed, 12 May 2021 16:41:41 +0000

Laura,

Following up on the list of file types that you inquired about below, many of the file types you listed are standard and very common file types. For example:

- avi and mov are video files that are playable with a standard media program such as VLC or Windows Media Player
- doc is a standard Microsoft Word format
- pdf is a standard Adobe format
- xlsx is a standard Excel file
- txt is a standard Text file viewable in Notepad or Wordpad
- bmp, jpg, png, tif, and tiff are standard image files that should be viewable in Microsoft Paint or any standard image viewer
- pps and ps appear to be viewable via PowerPoint
- dat files can be viewed as standard text files in Notepad or Wordpad

For the remaining file extensions, some may be system files without content. You may be able to view the files with the other extensions using Quick View Plus.

If you continue to have difficulty, we can provide more specific assistance if you provide a list or even just examples of Bates numbers that present these issues.

Best,

From: [REDACTED]
Sent: Tuesday, May 11, 2021 11:01 PM
To: Laura Menninger <[REDACTED]>
Cc: [REDACTED] (USANYS) <[REDACTED]>; [REDACTED] <[REDACTED]>; [REDACTED] <[REDACTED]>; Jeff Pagliuca <[REDACTED]>; Bobbi Sternheim <[REDACTED]>
Subject: RE: US v. Maxwell - [conferral re photo and other discovery deficiencies]

Laura,

I have responded to your comments below in red.

I am working with the FBI to understand the discrepancy you pointed out, which I did not appreciate until receiving your May 7, 2021 email. The 2,100 estimate was the amount of files that the FBI verbally informed me had been loaded onto the second hard drive when I was arranging for your review of evidence at 500 Pearl. At the time, I did not recall that the 302 had a different number, and I did not check the number the FBI provided verbally against the 302. As soon as I receive clarification from the FBI, I will reach back out to you.

As for your request to have access to Highly Confidential images and videos, paragraph 12 of the Protective Order in this case defines Highly Confidential information as discovery material that “contains nude, partially-nude, or otherwise sexualized images, videos, or other depictions of individuals.” That definition does not limit this category to child pornography. Paragraph 14 of the Protective Order further provides that any Highly Confidential materials “shall be made available for inspection by Defense Counsel and the Defendant, under protection of law enforcement officers or employees.” Given those provisions, as well as the importance of maintaining the security of nude images of third parties, including victims, we are not prepared to provide you with copies of nude or partially-nude images from the hard drives. However, we appreciate your concern that images that do not contain nudity appear to have been designated as Highly Confidential. Accordingly, I am working with the FBI to de-designate any images that do not depict genitals, breasts, or buttocks. Once those images have been de-designated, our office will produce them to you.

Best,

From: Laura Menninger [REDACTED]
Sent: Friday, May 7, 2021 4:43 PM
To: [REDACTED] <[REDACTED]>
Cc: [REDACTED] (USANYS) <[REDACTED]>; [REDACTED] <[REDACTED]>; [REDACTED] <[REDACTED]>; [REDACTED] <[REDACTED]>; Jeff Pagliuca <[REDACTED]>; Bobbi Sternheim <[REDACTED]>
(CIV) <[REDACTED]>
Subject: RE: US v. Maxwell - [conferral re photo and other discovery deficiencies]

Thank you for your response of April 23. I haven't heard back from you last week as promised on this or my April 28 request, so I'm writing to follow up. I have responses to specific questions of yours below in blue.

Additionally, I have more questions regarding your production of “highly confidential” (“HC”) images and videos. When we met the week of April 13 in NY, during which time I requested to view all evidence in the government's possession, including all highly confidential material, you described for me two hard-drives that contained all of the HC images and videos from this case.

- First, one of those hard-drives you said contained all of the materials extracted from the disks contained in the black binders. There were approximately 40,000 or so images (Excel spreadsheet SDNY_GM_00467567) of which 3,400 images were deemed HC and tagged “#nudity” by your team (SDNY_GM_00467568). (I still await a response regarding the problems with your metadata overlay).
- Second, the other hard-drive contained images extracted from Epstein's devices which were searched pursuant to a warrant. You said the responsive image/video files were contained on that second hard-drive, and there were approximately 2,100 “nude” or HC images on that hard-drive. You did not produce the metadata for those images because it was still present on the files which had been digitally extracted.

As I understood it then, there were approximately 5,500 HC images that you made available for review. However, the FBI Report dated January 27, 2021 (produced at SDNY_GM_02742399) indicates there are approximately 33,747 HC images and 895 HC videos that were identified by a digital review of CART-processed evidence; I presume based on the CART numbers that this list is the same as the images extracted from Epstein's devices, or as I understood it, the content on your hard-drive #2 above.

I am completely unclear as to why you informed me that there were 2,100 nude images from Epstein's devices, but this report seems to indicate there were approximately 34,000 HC images and videos. Please let me know if I am misunderstanding what you told me and if so, what the correct information is.

I reiterate my request that you provide to us hard-drives with all of the HC material minus any child pornography.

I am available to discuss if that would be more convenient.

Thanks,

Laura

Laura A. Menninger | Partner

Haddon, Morgan & Foreman, P.C.

150 [REDACTED] 10th Avenue | Denver, CO 80203

From: [REDACTED] <[REDACTED]>

Sent: Friday, April 23, 2021 10:13 AM

To: Laura Menninger <lmenninger@hmflaw.com>

Cc: [REDACTED] (USANYS) <[REDACTED]>; [REDACTED]

[REDACTED] <[REDACTED]>; Jeff Pagliuca <[REDACTED]>

[REDACTED] 'Bobbi Sternheim <[REDACTED]>

(CIV) <[REDACTED]>; [REDACTED] <[REDACTED]>

Subject: RE: US v. Maxwell - [conferral re photo and other discovery deficiencies]

Laura,

I am working with our team as quickly as we can to address the issues you raised in the below email. In particular:

- I have asked our vendor to look into the issues with SDNY_GM_00467566. When I attempt to access that document on our Relativity database, I also receive an error message saying that the document is corrupt. I am not sure what this spreadsheet is because the only two spreadsheets that I'm aware of that correspond with the SDNY_PROD011 contained in the November 9, 2020 production are the two other Excel spreadsheets you referenced. In any event, I am looking into the issue.

I understand from your subsequent email that the Excel spreadsheet at 467566 does not have any content. Are there any other "Bates-stamped" documents without content?

It is possible that there are additional items that were recovered from electronic devices and storage media that do not have content. For example, as Chris and I discussed in a separate email exchange, certain attachments to emails on Epstein's devices were only partially recovered. Because they were attached to responsive emails, we produced those partially recovered attachments, even though many did not have content.

- I am similarly working with our vendor to understand how to best identify for you which Bates number corresponds with the metadata in the index contained in the Excel spreadsheets.

We received your overlay on April 27. On April 28, I wrote you back with the persistent problems despite the overlay. I do not see that you have responded to those concerns. Can you please advise?

I have been working with our vendor and paralegals to look into this issue and will respond to your April 28 email shortly.

- Can you please provide me with a list of the photos that you are unable to view? Once I have that list, I will check to see whether we are able to open them on our end.

I am not able to provide you a list of the photos I am unable to view, for a number of reasons including my work-product protections. I can highlight the file types that are contained on the disk and perhaps your vendor can tell us which reader will work with those file types:

apmaster

apversion
attr
avi
bmp
bup
dat
data
db
db-journal
doc
ds_store
f catalog
ifo
images #1
images 2
iphoto
ivc
jpg
mov
mpg
NULL
pdf
png
pps
ps
psb
psd
raf
tif
tiff
tropez
txt
xlsx
xml

I will forward this response to the vendor and see what, if any, assistance we can provide.

- Can you be more specific in identifying photographs that you believe should have been produced but have been omitted, please? We have endeavored with the FBI to produce copies of all non-nude photographs recovered from searches of Epstein's residence to the defense, and I am not aware of any intentional omissions.

See above.

Without specifics, I cannot address this issue further.

- I am discussing with the FBI your request that we produce all Highly Confidential images to you. I will respond to that request next week.

I do not believe I received a response to this last week as indicated. Can you please update me?

Please see above.

- Once we have a firm trial date, I will let you know by what date I expect to be able to provide you with a list of the Highly Confidential photographs we may introduce at trial.

Please advise.

We will discuss this request as a team now that we have a trial date of November 29, 2021.

- I am working with our paralegals to assess the list of files that your client is unable to review at the MDC. As soon as we have finished looking into those issues, I will let you know.

Is there any update on this project?

As I mentioned above, our paralegals are still working through this list of documents. As soon as I have information to provide on this score, I will reach out.

Best,

From: Laura Menninger

Sent: Wednesday, April 21, 2021 1:42 PM

To: [REDACTED] <[REDACTED]>

Cc: [REDACTED] (USANYS) <[REDACTED]>; [REDACTED]

[REDACTED] <[REDACTED]>; Jeff Pagliuca [REDACTED]

Bobbi Sternheim [REDACTED]

Subject: US v. Maxwell - [conferral re photo and other discovery deficiencies]

[REDACTED]:

I'm writing to follow-up on our discussion last Thursday regarding the photo evidence and to address a number of other critical problems with the discovery provided to date.

Unfortunately, both in the production to defense counsel and on the hard-drive supplied by your office to our client at MDC, there are thousands, if not hundreds of thousands, of photos that are still unreadable. We have spent countless hours, and a chunk of our client's resources, trying to rectify a number of these problems ourselves, to no avail. Our ability, and our client's ability, to review all of the discovery in this case is absolutely critical and is constitutionally guaranteed. Unless you can quickly propose a solution, we believe we need to raise this with the Court.

- We do not have a functional copy the Excel spreadsheet located at SDNY_GM_00467566. I have confirmed that the original spreadsheet provided to us is corrupt and the vendor and [REDACTED]-discovery provider cannot open it.
- The other two Excel spreadsheets from the production (and presumably the one we cannot open) are insufficiently detailed to tell us which photo goes with which meta-data.
 - The index contains multiple instances of the same "file name" with different hash values.
 - The index does not match any particular file with a Bates stamp.
 - The index does not indicate which files were withheld as "highly confidential."
- Many of the photo files that were provided in discovery ([REDACTED], SDNY011) do not have a discernible reader. I cannot open them. Ms. Maxwell does not have a reader on her MDC laptop that can read them. If the government is able to view them, then we should be provided the means to view them as well.
- A number of photo files appear to be missing from the MDC laptop and are not highly confidential, based on my review of documents last week. Because we do not have a list of what was/was not produced, however, we cannot confirm.
- As you know, the 2 x "highly confidential hard-drives" in NY did not work until Thursday once an appropriate reader was added to the laptop. I did not have enough time to view all of the files. I do not have the reader that you

ultimately added to that laptop.

- The discs that I attempted to view in NY (from various binders) would not load on the government laptop. I was unable to match up disks with potential files on the hard-drives. Because I did not have a functioning Excel spreadsheet, I also was not able to match any highly confidential photos from the hard-drives with the associated metadata.

I am requesting that you produce to defense counsel replicas of the two hard-drives that you made available for review last week, subject to all of the strictures of the protective order.

I recognize that you have designated as "highly confidential" photos that you contend contain "nude, partially-nude, or otherwise sexualized images, videos, or other depictions of individuals." Among the photos on the hard-drive that I was able to view, there were a lot of "nude" and "partially-nude" photos of adults, but I did not see anything that would qualify as child pornography under the statute. Some of the photos only showed a woman's back or shoulder. If you have reason to believe that there is child pornography contained on the two hard-drives, then certainly defense counsel is not asking to possess that material; you can designate it as such and we can view it at an acceptable location as occurs in any CP case.

Otherwise, I think the burden of reviewing adult nudity only in the government's office or courthouse imposes an extraordinary cost on our client and prevents us from analyzing the metadata, having our experts review the file structures, keeps us from preparing photos for use at trial, and generally impedes our defense.

In a similar vein, can you let me know when you are willing to disclose any photos that you intend to introduce at trial? As to any of those, I will need sufficient information and time to analyze them for foundation and admissibility purposes with an appropriate expert.

Finally, I am attaching an incomplete list of the documents that our client still cannot read at MDC. It is a small sample, as she has had to spend hours of her "review" time communicating to our staff which files she cannot read. Also, the manner in which the discovery was provided to her (load file format) precludes her from comparing the "image" and the "native" files (they do not, for example, have clearly labeled bates-stamps).

I would appreciate as prompt a response as you can provide so that we can address any issues with the Court on Friday.

Thanks,
Laura

Laura A. Menninger | Partner
Haddon, Morgan & Foreman, P.C.
150 [REDACTED] 10th Avenue | Denver, CO 80203
[REDACTED]