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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
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3 
4 Plaintiff,

5 v. 15 Civ. 7433 (RWS)

6 GHISLAINE MAXWELL,
7 Defendant.

8 -----x
9 New York, N.Y.
10 April 21, 2016
11 11:05 a.m.

12 Before:

13 HON. ROBERT W. SWEET,
14 District Judge

15 APPEARANCES

16 BOIES, SCHILLER & FLEXNER LLP
17 Attorneys for Plaintiff
18 BY: SIGRID STONE McCAWLEY

19 -and-
20 FARMER, JAFFE, WEISSING, EDWARDS, FISTOS & LEHRMAN, P.L.
21 BY: BRAD EDWARDS

22 -and-
23 PAUL G. CASSELL

24 HADDON, MORGAN & FOREMAN
25 Attorneys for Defendant
BY: LAURA A. MENNINGER
JEFF PAGLUICA

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1 (Case called)

2 THE COURT: Welcome back. I have read the papers.
3 Who knows. I might have missed something, but I think I've got
4 it fairly well under control. I would be pleased to hear
5 anything anybody wants to tell me in addition to what you've
6 already given me.

7 MS. McCAWLEY: Your Honor, this is Sigrid McCawley. I
8 would like to start, if it's convenient with the Court, with
9 the pro hac vice motions that are pending because we would like
10 counsel to be able to anticipate in these proceedings. Would
11 that be all right if I started with that?

12 THE COURT: I don't care.

13 MS. McCAWLEY: Thank you. Your Honor, you have before
14 you two pro hac vice motions. My client, [REDACTED]
15 would like to have counsel of record in the case be added as
16 Professor Paul Cassell and Brad Edwards. We have presented
17 those pro hacs to your Honor. This is the first time in my
18 years of practice that I've had a contested one, so I've looked
19 at the case law surrounding that and I think it is very clear
20 that a client is entitled to counsel of choice in a case.

21 In this matter she has selected these lawyers. They
22 have been working with her. They had been working on this
23 matter for many months now. We need them as counsel of record
24 in the case now because we are going to have depositions
25 throughout the country where, for example, Professor Cassell is

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1 in Utah. He will be able to handle the Colorado depositions
2 and things of that nature. We are here because those pro hac
3 vice motions are being contested. The core piece of that is
4 the argument that they should not be allowed to seek
5 confidential information in this case.

6 Your Honor will remember that I was before you a
7 couple of weeks ago again trying to get the deposition of the
8 defendant, which is set for tomorrow, but still hasn't occurred
9 yet. And in order to expedite that process I agreed to the
10 protective order that was put in front of the Court and I
11 waived all of my objections to that in order to be able to
12 facilitate and move that deposition forward. That protective
13 order provides that attorneys who are actively working on the
14 case can receive confidential material.

15 My opposing counsel has interpreted that to mean that
16 that must be a counsel of record in the case. We disagree with
17 that interpretation. I wouldn't have agreed to a protective
18 order knowing that they were already working on the case. If
19 that were the situation, as your Honor can understand in this
20 case, the majority of the material has been marked
21 confidential, so it would prohibit my cocounsel from working on
22 behalf of their client.

23 Your Honor, I'm here to request on behalf of my
24 client, [REDACTED] that she be entitled to have her
25 counsel of record of choice in this matter. If your Honor will

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1 indulge me, I would like Mr. Cassell to address his pro hac
2 motion, please.

3 MR. CASSELL: Good morning, your Honor, Paul Cassell.
4 I'm a law professor.

5 THE COURT: I don't want to hear it. Sorry. No.
6 Thanks very much.

7 MR. CASSELL: Thank you, your Honor.

8 THE COURT: Anything from the defense.

9 MR. PAGLIUCA: Yes, your Honor. Jeff Pagliuca on
10 behalf of Ms. Maxwell.

11 Your Honor, I have never opposed a pro hac motion in
12 my 34 years of practice, so this is a first for me. But it is
13 clear, your Honor, that these lawyers will be witnesses in this
14 case.

15 THE COURT: This we don't know. I can't make that
16 determination now. Anything else?

17 MR. PAGLIUCA: Yes.

18 THE COURT: You may be totally right, but I don't
19 know.

20 MR. PAGLIUCA: Your Honor, here is the problem. This
21 case is about the plaintiff's false allegations.

22 THE COURT: Yes. I think I picked up on that.

23 MR. PAGLIUCA: These are the lawyers that wrote the
24 false allegations.

25 THE COURT: I think I picked up on that, too.

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1 MR. PAGLIUCA: These are the lawyers that admitted
2 that these were false allegations.

3 THE COURT: I know. I don't have to tell you, you
4 know, there is going to be all kinds of privilege issues, all
5 kinds of issues about whether or not they have to testify. We
6 are not at that stage. I cannot and I will not decide that
7 now.

8 What else?

9 MR. PAGLIUCA: There is a problem with the sharing of
10 confidential information with these lawyers. These lawyers
11 have both personal and professional interests.

12 THE COURT: I understand that. I get that point.
13 Anything else?

14 MR. PAGLIUCA: No, your Honor.

15 THE COURT: This is what we will do on the pro hac.
16 Everybody agrees, nobody, maybe in the world, but nobody in
17 this courtroom, including me, has dealt with this kind of
18 problem before. That's perhaps only one of a number of issues
19 that are unique about this case. That's neither here nor
20 there. Clearly, the plaintiff has the right to consult with
21 any lawyer she chooses. However, the materials here are
22 sensitive. I don't know the extent to which they have been
23 designated confidential, but I'm quite sure that a substantial
24 number of them have been, by the very nature of the case, I
25 guess. Let me put it this way. I want to be sure that we

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1 enforce the confidentiality appropriately.

2 Now, with those preliminary thoughts in mind I am
3 going to deny the motion at this time because I know that there
4 is a statement, some kind of a statement from the mediator in
5 the Florida action. When I get a piece of paper that says the
6 Florida action is dismissed, a court order or whatever, then
7 this motion can be renewed.

8 Also, I want an affidavit from the two lawyers that
9 there is no matter in which they are personally involved, that
10 they are making no claim, there is no claims, there is no
11 litigation in which they are involved. The reason I say that
12 is that I would not grant the application for a pro hac status
13 to a party in this or a related litigation. If I get those
14 affidavits and the statement about the closure of the Florida
15 case in which they are a party, then the application can be
16 renewed and at that point I would be probably inclined, unless
17 something else comes up or unless the defense tells me
18 something that I don't now know, I would grant the application
19 that brings us to the order itself and the meaning of the
20 order. I think active in the litigation is the key phrase.
21 The plaintiff has listed the people that she considers would be
22 appropriate and it's these two gentleman and I think one other
23 person, and that's fine. That is the definition.

24 However, I'm also going to ask the parties to agree
25 upon an order that would expand the confidentiality agreement

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1 to this extent, to require the plaintiff to indicate to me and
2 to the defense if there is anyone else who is going to be
3 active in the litigation. I'll tell you why I feel this way.
4 I want to be sure that we can enforce the confidential aspect
5 of that agreement, and I think that could be critical down the
6 line. That's the reason for those requests.

7 Now, we also have a motion to compel.

8 MS. McCAWLEY: Your Honor, can I just get
9 clarification very quickly because I don't want to have to come
10 back to the court so I want to make sure I'm following
11 correctly. Your ruling, because we have a deposition tomorrow
12 that counsel was going to be assisting me with, particularly on
13 the Fifth Amendment --

14 THE COURT: Can't have access unless I get these
15 materials by then. If I do, that's something else. If I do,
16 fine. Otherwise, they can't have access to the confidential
17 data. They can assist.

18 MS. McCAWLEY: Can I just point something out to the
19 Court as well.

20 THE COURT: The plaintiff can have any lawyer she
21 wants. The question is the confidential materials.

22 MS. McCAWLEY: Can I just point the Court to one more
23 issue, because this is their protective order. They now said
24 to the Court that these two individuals are witnesses or
25 potential witnesses. The protective order allows in Section G

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1 confidential material to go to deponents, witnesses or
2 potential witnesses.

3 THE COURT: That's a different issue. I have not
4 dealt with that. Obviously anybody who is a witness may have
5 access to the confidential material, because they have to buy
6 into the confidentiality order in order to do that. But they
7 are outside of it at the moment.

8 MS. McCAWLEY: Your ruling is, they cannot attend the
9 deposition tomorrow?

10 THE COURT: They can. Anybody can attend the
11 deposition that anybody wants to have, but they can't
12 participate in it. They can't have access to the confidential
13 material until we get this matter straightened out. Ok.

14 MS. McCAWLEY: I understand, your Honor.

15 MR. PAGLIUCA: Your Honor, we will be designating the
16 testimony as confidential.

17 THE COURT: You see. There you go. That's life. I
18 can't believe that this entire testimony is going to be
19 confidential. Honestly, you all are too much. Ok. If that's
20 what you do, you know that's not going to work because not all
21 of this stuff at issue is going to be confidential. No, no
22 way. What is your name? Ok. We will deal with tomorrow's
23 problem tomorrow.

24 MR. PAGLIUCA: Ok, your Honor.

25 THE COURT: The compel. Anybody want to add anything

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1 on that?

2 MS. MENNINGER: Yes, your Honor. Laura Menninger on
3 behalf of Ms. Maxwell. I have taken the liberty, your Honor,
4 of just making a very short little cheat sheet of the
5 outstanding issues, if I may approach.

6 THE COURT: Yes. It will be interesting to see if
7 yours is the same as the one we have prepared. Yours is much
8 longer than ours.

9 MS. MENNINGER: Your Honor, I'm happy to address all
10 of the ones on mine. I certainly am also happy to take
11 direction from the Court regarding issues that you believe to
12 still be of more interest.

13 THE COURT: As I say, I've read your papers. I would
14 be pleased to hear anything you want to add that you think is
15 not covered or you want to respond or anything like that.

16 MS. MENNINGER: Your Honor, one of the largest and
17 most significant pieces to us are the assertions by plaintiff
18 that her own communications with law enforcement are somehow
19 protected by --

20 THE COURT: I'm prepared to deal with that.

21 MS. MENNINGER: The second one, your Honor, and it
22 relates somewhat to the issues already presented on the pro hac
23 motions, are our requests for the fee agreements with all of
24 plaintiff's various 15 or so lawyers who purport to be
25 representing her. Your Honor, I can find no case law that

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1 suggests that the agreements are privileged, as plaintiff
2 argues. She has refused to identify when these individuals
3 began their representations, the nature of the representations.

4 THE COURT: There is a little confusion here, at least
5 in my mind, as to what we are talking about. I certainly
6 understand the two gentlemen whose applications I have just
7 dealt with and the third person, who I take it is affiliated
8 with the Boies firm.

9 Obviously, over time the plaintiff has probably
10 conferred with other lawyers. But who cares? Let's assume she
11 has talked to 20 more lawyers. You want all those retainers?
12 That doesn't make any sense. What is the universe we are
13 talking about?

14 MS. MENNINGER: Your Honor, I certainly understand all
15 of the members of the Boies firm that currently represent her.
16 The third individual, if I understand correctly, is a gentleman
17 by the name of Stan Pottinger. He is a lawyer of some renown.
18 He is also an author of best-selling books. He is listed quite
19 frequently on plaintiff's privilege log as being part and
20 parcel of advice being given to her on, quote/unquote, media
21 issues.

22 THE COURT: That is one.

23 MS. MENNINGER: Your Honor, there are other persons
24 listed on their privilege log. Many are listed as counsel for
25 plaintiff, but others are listed. Attorney giving advice to

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1 victim's --

2 THE COURT: Is what you want the retainer agreements,
3 if there are any, whatever the arrangements are, with anybody
4 on the privilege log that is listed as rendering advice?

5 MS. MENNINGER: Yes, your Honor. That, I think, would
6 be appropriate because some of our biggest issues concern the
7 privilege log.

8 THE COURT: I understand.
9 What else?

10 MS. MENNINGER: Your Honor, we have asked for, but
11 been denied by plaintiff, her own deposition testimony in the
12 Florida action. In that case the Court entered a confidential
13 order --

14 THE COURT: I'm prepared to deal with it.

15 MS. MENNINGER: Your Honor, the next topic are
16 plaintiff's medical records.

17 THE COURT: I think I understand that. There is one
18 thing, though. Are there any pre-'99 medical records?

19 MS. MENNINGER: Your Honor, the case law is quite
20 clear that injuries that were preexisting --

21 THE COURT: I'm sorry. Excuse me. Go ahead.

22 MS. MENNINGER: Plaintiff has alleged that the
23 defamation of this action triggered or caused her to reflect
24 back upon her alleged sexual abuse. She has also alleged, for
25 example, that many, several, three, I think, at last count, or

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1 four individuals had sexually abused her prior to ever meeting
2 Mr. Epstein.

3 If she has evidence that she already was suffering
4 from depression or some type of mental health disorder before
5 meeting our client, Ms. Maxwell, or Mr. Epstein, then her
6 flashbacks, if you will, could be related to other incidents
7 that she has put out in the press. And she, I believe, has
8 also told the press that she was in a drug rehabilitation
9 facility at the time that she met Mr. Epstein.

10 Obviously, to the extent she was under the influence
11 of drugs, which is what she has told the press, at the time she
12 met him, she persisted in being addicted to drugs during the
13 time that she knew Mr. Epstein, and it certainly relates to all
14 of her requests for, I believe she has requested \$30 million in
15 damages, your Honor, not just from the defamation, but also
16 harkening back to what she claims were her years as a sex abuse
17 victim.

18 THE COURT: What's the basis of your statement that we
19 will call it the flashback?

20 MS. MENNINGER: Your Honor, I believe --

21 THE COURT: Because, quite frankly, I was unaware of
22 that. Is that my error? Are you telling me something that's
23 not quite right?

24 MS. MENNINGER: Your Honor, I believe that is what
25 plaintiff has alleged in her complaint. If you can give me a

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1 moment. To the extent she is now alleging she suffers from
2 emotional distress from any preexisting --

3 THE COURT: That's from the defamation.

4 MS. MENNINGER: She claims it's from the defamation.
5 However, your Honor, if she has preexisting conditions that
6 were truly the cause of whatever emotional injury she claims
7 that she now possesses --

8 THE COURT: Correct me if I'm wrong, and perhaps
9 plaintiff will make it clear, my understanding is that the
10 injuries alleged result from the claim of the alleged
11 defamation, period.

12 MS. MENNINGER: Your Honor, she has claimed emotional
13 distress from the defamation, yes. We are requesting evidence
14 that would show that she has preexisting emotional conditions.

15 THE COURT: Not from the defamation.

16 MS. MENNINGER: Not from the defamation. From the
17 many, many other things that have occurred in her life
18 predating even her meeting Mr. Epstein and Ms. Maxwell, as she
19 has told the press, not because we told the press that.

20 Your Honor, it is difficult, if not impossible, to
21 address her claimed \$30 million emotional distress from a
22 defamation statement that was a denial of her allegations
23 versus any emotional distress or emotional conditions she
24 already had before any such statement was made.

25 Similarly, your Honor, we have asked for discovery of

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1 her claimed prior sexual abuse. She has, again, put in the
2 press a number of statements regarding that, and I can't
3 imagine that it is to the extent she claims privacy now, those
4 might be relevant in our case both on credibility and also
5 damage issues.

6 Your Honor, we have asked for a lot of other
7 interrogatories and documents that go to her damage claims, her
8 education records, her work history. She has refused to answer
9 any questions before where she has worked. She has refused to
10 answer any questions about where she went to school. All of
11 these are appropriate under the local rule for interrogatories.

12 Finally, your Honor, we have asked for her contracts
13 with media. She has refused to disclose those. She has
14 refused to disclose her tax returns that show all of the
15 payments that she has received from various media sources.

16 THE COURT: I take it your view of any funds from the
17 media would operate to reduce her damages.

18 MS. MENNINGER: Your Honor, it also shows her motive
19 and bias in bringing this case. To the extent she has been
20 paid for her stories to the media, which she has, she has
21 admitted that she has been paid hundreds of thousands of
22 dollars for giving these stories to the media.

23 But to the extent that she is now bringing this
24 defamation claim, if she is still either planning to receive
25 more money from the media, she has a motive and bias to make

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1 her story consistent with her previous stories. She has
2 claimed \$5 million in lost wages, your Honor. This is a person
3 who has worked primarily as a waitress in the last 15 years,
4 until her media sensational story was purchased from her by
5 some British press.

6 THE COURT: Anything else?

7 MS. MENNINGER: Your Honor, the other issues are
8 addressed in our papers. We have highlighted her incomplete
9 production on several fronts and her refusal to answer any
10 interrogatories. So I would rest on my papers with respect to
11 the other arguments. Thank you.

12 MS. McCAWLEY: Thank you, your Honor. I'd like to be
13 very clear here, your Honor. Discovery production, I've tried
14 to do that in our papers. But listening to opposing counsel
15 I'm concerned maybe she hasn't reviewed the documents we have
16 produced. We have clearly produced all of the media
17 communications she has, including records --

18 THE COURT: All the media.

19 MS. McCAWLEY: All of the media communications. She
20 has issued wildly broad requests in this case which we have
21 complied with. We ran over 200 search terms. Her request No.
22 5 alone seeks communications with over 100 individuals. And we
23 have complied, your Honor. This is coming from the defendant
24 who until Monday night, when you directed her to produce
25 privileged information, has only produced two e-mails in this

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1 case.

2 Your Honor, we have complied with our production. We
3 have produced the materials that she is saying we have not
4 produced. It's incorrect. We have produced her school records
5 that we have. We have produced her tax records that we have.
6 We have produced all of those items that we have.

7 With respect to her medical records I am going to
8 direct you to the case that is cited in our brief as the Evanko
9 case and it was a similar circumstance to here. It was a Title
10 VII case where there were emotional distress damages being
11 alleged and the Court found that the other side could not have
12 carte blanche ruling over all of her medical records from the
13 time she was born to the present. We met and conferred on two
14 hours on their discovery requests, your Honor. We agreed to
15 produce all of her medical records that we had from 1999 to
16 2002 and anything else we had that was related to the sexual
17 abuse she endured at the hands of the defendant and
18 Mr. Epstein. We have agreed to produce those.

19 We have already started producing those records from
20 the various doctors, from the treating physicians. Those are
21 in their production. Should they be entitled to things that
22 happened prior to that? Absolutely not, your Honor. They are
23 not entitled to a full-scale production of everything that's
24 happened in this young lady's life. She was abused by these
25 individuals. She shouldn't be reabused by having to disclose

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1 things that happened prior to her time with them. Your Honor,
2 we do object to the production of that material.

3 THE COURT: The flashback allegation.

4 MS. McCAWLEY: I think what she may be referring to, I
5 have not heard that term used, I think what she may be
6 referring to was the fact that this is a defamation claim and
7 the person who defamed my client was also an abuser, we allege.
8 So when she is defamed by the person who abused her and that
9 abuser is calling her a liar, that caused her significant
10 emotional distress. It's different than if some other
11 individual that she had not had contact with called her a liar.
12 When she is talking about a flashback, maybe that's what she is
13 referring to, but we don't have the word flashback anywhere in
14 our complaint.

15 THE COURT: No. I made that up.

16 There will be no claim by the plaintiff that the
17 defamation caused her distress by making her aware or as a
18 result of the prior sexual abuse.

19 MS. McCAWLEY: The sexual abuse by the defendants?

20 THE COURT: No.

21 MS. McCAWLEY: Sexual abuse by others.

22 THE COURT: Yes.

23 MS. McCAWLEY: No. Sexual abuse that relates to the
24 Epstein period, yes.

25 THE COURT: That I understand.

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1 MS. McCAWLEY: I think we are on the same page.

2 THE COURT: I think talking about the earlier period.

3 MS. McCAWLEY: Prior to Epstein, no, no, she doesn't
4 have a claim with respect to that.

5 THE COURT: Anything else?

6 MS. McCAWLEY: Your Honor, I just want to point out
7 again that our production -- you asked us to complete that. We
8 have gone through and run over 200 search terms. We have
9 produced all of those communications she has had with all of
10 those individuals. The things that we have not produced are
11 the criminal investigation records. I know your Honor is going
12 to address that. I would like to be very clear there.

13 The point there is that she has said in the motion to
14 stay papers that she filed Tuesday that she needs to have that
15 information so she can decide whether she is going to be
16 asserting her Fifth Amendment privilege. Truthful testimony
17 shouldn't have to be crafted, your Honor. She shouldn't need
18 to know what agency is investigating her in order to decide
19 whether or not she is going to be asserting her Fifth Amendment
20 privilege.

21 We do have with us, your Honor, for an in camera
22 submission, if you would like it. That is the way that courts
23 have dealt with this issue in the past. When there is a claim
24 from an agency that the disclosure of that investigation could
25 harm the investigation, we can submit that to you for in camera

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1 review so you are aware of the ongoing investigation. But it
2 is my view that that needs to be protected.

3 As you probably know, the history of these cases with
4 Mr. Epstein, there were a variety of things that went on in
5 that investigation, so there is reason to keep an investigation
6 in this situation protected so that they can properly
7 investigate and move forward with that without being inhibited
8 by other individuals. Your Honor, I would ask that that remain
9 protected. It's covered by her very, very broad requests,
10 which is why we had to lodge those objections. I would
11 appreciate your Honor considering our arguments with respect to
12 that issue.

13 The other things, your Honor, that she has raised is,
14 for example, she had asked for the Epstein settlement agreement
15 and that was one of the things that she asked for. We agreed
16 to produce that if we got the waiver from Mr. Epstein because
17 we can't produce it without that waiver.

18 I believe that covers it, your Honor. If you have any
19 questions, I would be happy to answer them.

20 THE COURT: Thanks very much.

21 Thank you all for all the clarification that you've
22 given me. I much appreciate it.

23 With respect to the retainers and the dates of
24 representation, that information will be provided for any
25 attorney that's listed on the privilege log.

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1 The plaintiff has told me that they have now supplied
2 all the education and employment records that they have. I
3 think if there is any question about that, if the defense is
4 skeptical, I would ask the counsel for the plaintiffs to make
5 that statement on the record, not necessarily here, but by way
6 of a statement to the Court and principally to the defendant.

7 On the question of residences, that's, in my view, not
8 a contention interrogatory because of the nature of this case.
9 I think it's more like listing witnesses. So I would say that
10 the plaintiff should supply all residences.

11 The Dershowitz deposition will be produced under the
12 confidentiality provision. As I read what I've been given,
13 it's to be held in confidence and it will remain in confidence,
14 but it will be produced.

15 Yes, the tax returns should be produced. 15 years
16 seems like -- I see. Ok. 15 years.

17 The medical records of the period '99 to 2002 will be
18 produced and the plaintiff will indicate whether that
19 production is complete or, if it isn't complete, when it will
20 be complete.

21 As for the pre-'99 medical records, based on where we
22 are at the moment, I do not believe that those are relevant.
23 Because the damage issue relates, in my view, solely to the
24 defamation. If that changes in any way, I will revisit that
25 issue.

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1 The criminal investigation. Any materials that the
2 plaintiff has with respect to any criminal investigations will
3 be turned over except for any statements made by the plaintiff
4 to law enforcement authority and those statements, if there are
5 such, will be submitted in camera, and I will review them.

6 I hope that clears up our problems. Tell me if I have
7 failed in my effort to do so. Yes, ma'am.

8 MS. MENNINGER: Your Honor, two quick things, I think.
9 With respect to medical records, we also certainly believe that
10 the period from the time the statement was made in January 2015
11 until the present, because she has claimed emotional distress
12 from that defamation --

13 THE COURT: Sure, yes.

14 MS. MENNINGER: The problem is, we have asked through
15 interrogatory what were the names of the medical providers
16 because they have not disclosed who her medical providers were.
17 So there is no way for us to tell whether the records in fact
18 have been sought from and produced with respect to each of
19 those medical providers. I will say that other records in the
20 possession of plaintiff lists other doctors who they have not
21 asked for records from or releases.

22 THE COURT: Let's see if we can clear that up.

23 MS. McCAWLEY: We have disclosed the names. She has
24 those names. We have also disclosed records, the more recent
25 records. We have not contested that.

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1 With respect to the interrogatories, your Honor ruled
2 on this previously, but there is a local Rule 33.3, which is
3 why we didn't serve interrogatories in this case at this point.
4 She is deposing the plaintiff in two weeks, next week, whenever
5 it is, and can certainly ask those questions as well. But we
6 have disclosed the names of the providers.

7 MS. MENNINGER: They have not, your Honor.

8 THE COURT: Look. Wait just a moment. You two are
9 lawyers. Now, that is not an issue about which you should
10 differ. Go over in the corner right now, both of you, and
11 let's make it clear who is telling me the right story. Now.

12 I take it that I misunderstood the colloquy and that
13 this matter has been resolved.

14 MS. McCAWLEY: Your Honor, I think there was a
15 misunderstanding with respect --

16 THE COURT: I was sure.

17 MS. McCAWLEY: Dr. Olsen has been noticed for
18 deposition in Colorado already. In my view, we have disclosed
19 the doctors. Ms. Menninger says that there is other doctors
20 that have been disclosed in documents that we have not yet
21 listed to her. I think in discovery we are finding
22 additional --

23 THE COURT: You think you may not have discovered that
24 your client has had some doctors --

25 MS. McCAWLEY: In the past. We are talking about

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1 years and years ago. The recent doctors we have disclosed they
2 have noticed for deposition.

3 THE COURT: What else?

4 MS. MENNINGER: Your Honor, with respect to the
5 employment and education records, as you heard plaintiff say,
6 she has disclosed, quote/unquote, what she has. Under local
7 rule 33.3, we are allowed to ask for the names of witnesses
8 with knowledge at the outset of the case, and they might be
9 custodians of records. We asked her who have been your
10 employers. She won't tell us who her employers have been. She
11 has just gone through her computer and say if I have an
12 employment record I'll give it to you, but I am not going to
13 tell you who her employers were.

14 THE COURT: She will.

15 MS. MENNINGER: Same thing with the education records.
16 We asked her to list where she had gone to school and tell us
17 where it is. She won't do it. Those are the things where my
18 skepticism arises from.

19 Largely, to the extent your Honor has ordered the
20 production of whatever materials, criminal investigation
21 materials that were not to be submitted in camera, those were
22 the ones that involved plaintiff's statements, we would like
23 the other materials that they have brought with them today to
24 give to your Honor that do not encompass their client's
25 statements to law enforcement.

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1 THE COURT: I don't know whether there are such. Is
2 it possible that nothing in this lawsuit is clear? Well, I
3 tried to make it clear what should be produced and what
4 shouldn't. Anything that has been submitted to any law
5 enforcement officer by the plaintiff I will take in camera.
6 Anything other than that with respect to any law enforcement
7 should be produced.

8 MS. MENNINGER: Thank you, your Honor.

9 THE COURT: Thank you, all. I think we have the
10 pleasure of your company -- do we need you next week? We are
11 up to date, aren't we?

12 MS. McCAWLEY: Your Honor, we have a motion with
13 respect to our discovery that's set for next Thursday.

14 THE COURT: That's fine.

15 MS. McCAWLEY: Just before we adjourn, because
16 Mr. Cassell had a question, and I just want to make sure that I
17 understand, with respect to tomorrow's deposition, they are
18 entitled to attend but have to leave the room if confidential
19 information is disclosed?

20 THE COURT: That's where we are at the moment, unless
21 it changes.

22 MR. PAGLIUCA: Your Honor, with regard to next
23 Thursday, both Ms. Menninger and I have other matters that are
24 previously scheduled and it would be impossible for us to take
25 care of those matters and be here at the same time. I'm

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1 wondering what the Court would like to do about that.

2 THE COURT: First of all, you know how we play this
3 game. You don't ask me first. You ask your opponent first.
4 Have you done that?

5 MR. PAGLIUCA: I have not, your Honor.

6 THE COURT: Will you?

7 MR. PAGLIUCA: I certainly will, your Honor.

8 THE COURT: Now.

9 MR. PAGLIUCA: Absolutely.

10 THE COURT: You can go over to the corner, too.

11 MR. PAGLIUCA: I think we need a corner bar on this,
12 your Honor.

13 Ms. McCawley, I'm wondering if we can get a mutually
14 convenient date to hear that matter as opposed to next
15 Thursday.

16 MS. McCAWLEY: Of course.

17 MR. PAGLIUCA: That was simple enough, your Honor.

18 MS. McCAWLEY: Your Honor, one more thing. I didn't
19 realize that my counsel can submit that stipulation to you
20 because that case has been settled --

21 THE COURT: If I get something that closes that case
22 and I get the affidavit that there are no other matters in
23 which they have any claims or defenses relating to any of these
24 statements, that will do it.

25 MS. McCAWLEY: Your Honor, so I know, if we can submit

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1 that by fax this afternoon, will they be able to attend the
2 deposition tomorrow?

3 THE COURT: I would think so, if I think those are
4 adequate representations and so on. The statement from a
5 mediator doesn't mean anything to me. Something that has a
6 court sign to it. That I understand. But the mediator saying
7 that it's settled doesn't work for me.

8 MR. CASSELL: Your Honor, maybe Mr. Edwards could
9 briefly explain Florida procedure. The case has been
10 dismissed, but it does not require a Court's signature.
11 Mr. Edwards can elaborate more fully on that.

12 MR. EDWARDS: Sure. If I may. There are two ways in
13 which a case can be dismissed in Florida. One is by way of a
14 court order. The other is by way of a stipulation. That is
15 what was done. There was a stipulation of dismissal signed by
16 both parties, that being the plaintiff and the defendants and
17 counsel, that has been done and that was dismissed.

18 THE COURT: That's filed in the case.

19 MR. EDWARDS: That's filed in the case and filed in
20 the court.

21 THE COURT: Do you have a copy of that?

22 MR. EDWARDS: I can get a copy of it immediately.

23 THE COURT: Give it to the defense. If they have any
24 problems, they will let me know. That sounds all right to me.
25 What do I know about Florida except that it's flat and hot.

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1 Your representation sounds right.

2 MR. EDWARDS: Additionally, just with respect to the
3 affidavit, there needs to be an affirmation that we have no
4 other claims that relate to the statements in this case. Is
5 that what we are saying?

6 THE COURT: I think it should be broader than that. I
7 think it should be -- look. I don't think it would be
8 appropriate if there is any possibility for either of you to
9 being a party. That's what I'm after. And having any
10 proceedings against you arising out of the situation with the
11 plaintiff. I think it would be inappropriate for you to be
12 counsel if you have the potentiality of being a party, either
13 plaintiff or defendant, in any proceedings. If I get an
14 affidavit saying that you're unaware of any claims against you
15 or any intention to make a claim arising out of the
16 circumstances surrounding this lawsuit, that should be broad.
17 I think that would satisfy me.

18 MR. EDWARDS: Ok.

19 MR. CASSELL: I'll be filing those materials this
20 afternoon, your Honor. My plan is to attend --

21 THE COURT: The defense has a thought on this.

22 MR. PAGLIUCA: Your Honor, I am looking at documents
23 from Florida. One is a docket sheet captioned: Epstein v.
24 Brad Edwards and Paul G. Cassell, Lower Tribune Cases 15 000072
25 which shows that that matter is still pending. There is

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1 another case, as I understand it, Edwards v. Epstein and
2 Rothstein, which is also pending. I can confer about this,
3 your Honor.

4 THE COURT: Let's do this. When do you plan to return
5 to the snow fields?

6 MR. PAGLIUCA: There is still snow on the ground, your
7 Honor. Well, Friday night or Saturday morning is my current
8 plan.

9 THE COURT: That's great. Whatever the applicants
10 have on this subject, please turn it over. You all can work
11 out how you are going to do that. Turn it over to the defense.
12 And if there is anything you want me to do, I would be prepared
13 to do it tomorrow. But that way I hope we can get it cleared
14 up.

15 MS. McCAWLEY: Your Honor, we do have the deposition
16 of the defendant scheduled for tomorrow.

17 THE COURT: Then everybody will be having a nice time
18 together. Maybe you can all go out and have lunch, have a
19 drink, and exchange these documents and go away happy. Not
20 likely, but perhaps, depending on where you have lunch.

21 MS. McCAWLEY: Thank you, your Honor.

22 THE COURT: Anything else?

23 MS. MENNINGER: Nothing.

24 THE COURT: Thank you, all.

25 One thing. I would appreciate it if counsel would get

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1 together on my request for additional coverage in the
2 confidentiality agreement.

3 MS. McCawley: Sure.

4 THE COURT: Thanks a lot.

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