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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 VIRGINIA L. GIUFFRE,

4 Plaintiff,

5 v.

19 Civ. 3377 (LAP)

6 ALAN DERSHOWITZ,

7 Defendant.

Premotion Conference
(Via Teleconference)

8 -----x
9 New York, N.Y.
June 23, 2020
2:09 p.m.

10 Before:

11 HON. LORETTA A. PRESKA,

12 District Judge

13 APPEARANCES

14 COOPER & KIRK, PLLC
15 Attorneys for Plaintiff
16 BY: NICOLE J. MOSS, ESQ.

17 BOIES, SCHILLER & FLEXNER LLP
18 Attorneys for Plaintiff
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25 BY: ARTHUR L. AIDALA, ESQ.
IMRAN H. ANSARI, ESQ.

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APPEARANCES
(CONTINUED)

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BY: NICHOLAS J. LEWIN, ESQ.
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1 THE COURT: Counsel for Ms. Giuffre, please?

2 MS. MOSS: Good morning, your Honor. This is Nicole
3 Moss with Cooper & Kirk, and we represent Ms. Giuffre in the
4 *Giuffre v. Dershowitz* matter.

5 THE COURT: Yes, ma'am. Good afternoon.

6 Counsel for Mr. Dershowitz?

7 MR. COOPER: Good afternoon, your Honor. Howard
8 Cooper for Professor Dershowitz, and on the line unmuted with
9 me is my colleague Kristine Oren, as is Arthur Aidala and Imran
10 Ansari.

11 THE COURT: Thank you.

12 Is counsel for Ms. Maxwell on?

13 MS. MENNINGER: Yes. Good afternoon, your Honor.

14 Laura Menninger from Haddon, Morgan and Foreman on behalf of
15 Ms. Maxwell, and I have with me Jeffrey Pagliuca.

16 THE COURT: Thank you.

17 Is counsel for Doe on?

18 MR. LEWIN: Good afternoon, Judge. This is Nick
19 Lewin. I'm joined by my partner Paul Krieger from Krieger, Kim
20 & Lewin, on behalf of nonparty John Doe.

21 THE COURT: Yes, sir. Thank you.

22 Are there any other lawyers for parties that I haven't
23 noted?

24 MS. McCAWLEY: Yes, your Honor. This is Sigrid
25 McCawley from Boies Schiller. We represent Ms. Giuffre in the

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1 *Maxwell* matter. And I have with me my colleagues Andrew
2 Villacastin and Sabina Mariella.

3 THE COURT: Yes, ma'am. Good afternoon.

4 MS. McCAWLEY: Good afternoon.

5 THE COURT: Anyone else?

6 MS. GIERHART: Good afternoon, your Honor. This is
7 Cynthia Gierhart from Holland & Knight on behalf of Julie Brown
8 and the Miami Herald. And Christine Walz will not be joining.
9 I'll be on the call on her behalf.

10 THE COURT: Yes, ma'am. Good afternoon.

11 Who else?

12 All right. We seem to be together on this.

13 As we know, we are here on Professor Dershowitz's
14 motion to have the protective order in the *Maxwell* case
15 modified to permit the production of all of the information
16 that was subject to discovery in that case produced to him in
17 this case. I guess my first question is -- and this is
18 following reading Mr. Cooper's letter. Mr. Cooper has said in
19 here a couple of places that reliance on the protective order
20 was not reasonable. It seems that Judge Sweet seemed to have
21 found that it was reasonable and in fact was important to the
22 parties and nonparties who produced information and documents
23 in the case. Mr. Cooper, why shouldn't I give some weight to
24 Judge Sweet's findings that the reliance interest by those
25 parties was important?

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1 MR. COOPER: Thank you, your Honor. And I know you're
2 aware there are two Mr. Coopers in this case, but I get that
3 you're asking me.

4 THE COURT: I know. But I think Mr. Charles Cooper is
5 not on the phone. Is that right?

6 MR. COOPER: That is true. So --

7 THE COURT: Okay. So it's you, Mr. Cooper. You can't
8 hide.

9 MR. COOPER: Your Honor, nor would I want to.

10 Your question, of course, needs to be directed at the
11 precise context here. First, this is not an issue of public
12 disclosure as to which an expectation of reasonable reliance
13 might apply. First, Professor Dershowitz has offered
14 unequivocally -- and subject only to rights he would enjoy
15 anyway, to get the Court to issue a further order changing the
16 status quo, but -- to join the protective order.

17 But secondly, with all respect to Judge Sweet, his was
18 not the final word with regard to the protective order at issue
19 here, and I have studied as best I can, as someone without
20 access to the entirety of the record in *Giuffre v. Maxwell*, the
21 procedural history, but when the Second Circuit spoke with
22 regard to this issue, it was very clear that there had been no
23 effective individualized or particularized assessment of any
24 particular discovery item, deposition testimony, and the like
25 prior to its being allowed to enjoy the full protection of the

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1 order. And I would respectfully submit, under those
2 circumstances, your Honor, that someone who comes forward and
3 testifies with a concern about publication to the public
4 generally would not have had a reasonable expectation that
5 there couldn't be modification of the order to a private
6 individual who will agree to continue to abide by it and
7 that --

8 THE COURT: Oh, except that the protective order
9 stipulated that the materials would be used in connection with
10 that lawsuit only.

11 MR. COOPER: I do understand, your Honor, and I can
12 tell you that while I understand the literal language, we now
13 have Ms. Giuffre having brought claims that highly and
14 substantially overlap between the *Maxwell* case and the case now
15 brought against Professor Dershowitz.

16 But before I get to that, your Honor, I'm really
17 commenting on the issue of what someone could reasonably have
18 relied upon, and the issue that someone would have thought of
19 at that point in time was public disclosure, and then, of
20 course, your Honor, we get into the issue of -- assuming that
21 I'm correct, and I'm happy to argue it to you paragraphs
22 cited -- that there is substantial overlap between the cases,
23 and Ms. Giuffre has put at issue a conspiracy here between,
24 allegedly, Ms. Maxwell, Mr. Epstein, and Professor Dershowitz
25 that she put pretty much at issue in the *Maxwell* case that she

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1 brought, that we are going to be seeking these materials
2 anyway, and I would imagine that there can't be an expectation,
3 a reasonable expectation under this protective order that there
4 could be no further discovery if something already deemed
5 discoverable per se -- and by logic, since it happened in the
6 *Maxwell* case, it's going to be undertaken here -- and courts,
7 including the Second Circuit, your Honor, have addressed this.
8 In terms of judicial economy, the *EPDM* case speaks directly
9 about whether there is a right inevitably to discover the same
10 information. And so I don't think it would be reasonable for a
11 party who is a witness in both cases to expect that their
12 discovery materials, their deposition testimony, somehow would
13 be immune from discovery in a further lawsuit.

14 THE COURT: All right. Who wants to speak on the
15 other side of that, please?

16 MS. MENNINGER: Your Honor, this is Laura Menninger on
17 behalf of Ms. Maxwell.

18 I would strongly dispute that the parties, including
19 Ms. Maxwell particularly but also any of the third parties from
20 whom discovery was sought and obtained in the *Maxwell* matter,
21 didn't rely on the promises made in the protective order that
22 the materials would be destroyed or returned at the conclusion
23 of that case. It was expressly --

24 THE COURT: But may I interrupt you, Ms. Menninger.
25 What happened to that provision? What happened to that

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1 provision? Why wasn't that done at the end of the case?

2 MS. MENNINGER: Your Honor, we attempted to enforce
3 that provision, especially with regard to Ms. Giuffre's counsel
4 at the time, and we had a hearing in front of Judge Sweet where
5 it was determined that because there was still ongoing
6 litigation with the third-party intervenors and appeal on the
7 Second Circuit, that it was not yet ripe to be resolved.

8 THE COURT: Thank you. I will share Mr. Cooper's
9 failure to memorize every docket entry in the case. Thank you.

10 Go ahead, ma'am.

11 MS. MENNINGER: And your Honor, I would note a couple
12 of other concerns we have on this reliance point.

13 For example, the protective order provided that the
14 only attorneys who would be given access to the confidential
15 materials were attorneys actively working on the *Maxwell* case.
16 I was troubled, when I reviewed some of the discovery responses
17 that were attached to Mr. Cooper's letter, that it appears that
18 Ms. Giuffre's current counsel, which is new and different
19 counsel at Cooper & Kirk, appear to have access to the
20 confidential materials even though they were never actively
21 working on the *Maxwell* case. They may promise to produce
22 Ms. Maxwell's production in *Maxwell* in the *Dershowitz* case if
23 this Court so orders, and it also appears that they have
24 produced all of Ms. Giuffre's depositions and productions in
25 the *Maxwell* case over into the *Dershowitz* case.

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1 So the leakage concern that we have, the reliance that
2 we have on the protective order is coextensive with the third
3 parties' reliance but certainly no less diminished. When our
4 client was ordered to submit to second and third depositions,
5 that was, Judge Sweet found expressly, based on the promise of
6 the protection of the protective order, and so to now say that
7 no one could reasonably have relied on a protective order which
8 expressly provided that those materials would be destroyed or
9 returned at the conclusion of the case I think is not supported
10 by the plain language of the protective order and the rulings
11 of Judge Sweet.

12 THE COURT: Ms. Moss, is it the fact that you and your
13 colleagues have access to those materials from the *Maxwell*
14 case?

15 MS. MOSS: Your Honor, when we were retained by
16 Ms. Giuffre, she retained us both to represent her in this case
17 and to represent her in conjunction with the Boies Schiller
18 firm in the *Maxwell* case, so yes, we do have access to those
19 materials. And as I think we made clear in our responses to
20 defendant Dershowitz, the reason we could not produce them is
21 because of the protective order.

22 But I would remind your Honor that when it comes to
23 Ms. Giuffre's depositions from the *Maxwell* case and her own
24 production in that matter, at our initial status conference
25 with you, you directed us to provide those, so we of course did

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1 follow that directive.

2 THE COURT: Yes, ma'am.

3 Who else wants to be heard on reliance?

4 MR. COOPER: Your Honor, this is Mr. Cooper again. I
5 do want to respond to what was just said, but I don't want to
6 go out of turn.

7 THE COURT: Go ahead.

8 MR. COOPER: Thank you, your Honor.

9 I would just ask your Honor to consider the piece of
10 information that you've just learned, which is, frankly, news
11 to me and other counsel for Professor Dershowitz, and that is
12 that Cooper & Kirk have access, in terms of prosecuting the
13 case against Professor Dershowitz and defending against his
14 claims, to all of the *Maxwell* materials, while we do not. And
15 with respect, I understand how that seems to have come about by
16 a coincidence or perhaps an intentional representation in both
17 cases, but that situation is unfair and inequitable, and I
18 can't imagine that anybody reasonably relying on a protective
19 order would ever have foresaw that could be achieved by virtue
20 of the protective order. That's not what it's intended for, to
21 give a side a completely unfair tactical advantage in a piece
22 of litigation, especially like this.

23 THE COURT: Could not have foreseen, counsel.

24 MR. COOPER: Correct, your Honor.

25 THE COURT: Thank you.

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1 MR. COOPER: Would not have been reasonable.

2 THE COURT: Thank you.

3 Who else wants to be heard on reliance?

4 All right. The next question I have is: How are we
5 to protect the interests of the nonparties or third parties who
6 either produced materials or were mentioned in the materials?

7 MR. COOPER: And your Honor, again --

8 THE COURT: And I'm sorry. And one more thing.
9 Related to that, obviously, are the concerns I have about
10 avoiding the unsealing process in *Maxwell*. I think I do count
11 this as Professor Dershowitz's third try at that.

12 But go ahead, counsel. Mr. Cooper, did you want to
13 talk?

14 MR. COOPER: Your Honor, I assume you were directing
15 that question at me as well, so I'm happy to.

16 The short answer is that Professor Dershowitz has
17 agreed unequivocally to sign on to the protective order in the
18 case, which means that his lawyers with appearances in the
19 matter of *Giuffre v. Dershowitz*, the client himself, their
20 experts, and those listed in the protective order will be the
21 only ones with access to the materials, and they will be used
22 solely for purposes of the case. There will be an ability --
23 and I don't know this, but logic dictates that much of the
24 materials have already been designated as confidential, if not
25 all of them, except those published by the Second Circuit, or

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1 ordered published, and so the net effect will be that for
2 purposes of this litigation, an additional set of lawyers and
3 their clients will have access.

4 And further, your Honor, paragraph 14 of the existing
5 protective order invites the parties to seek further order of
6 the Court if there is an unforeseen issue that needs to be
7 dealt with, so I would imagine if there is some additional
8 concern that the producing party, or the subject party, more
9 accurately, could raise it with the Court, and, in turn, to the
10 extent that the protective order was improvidently granted in
11 terms of covering certain items -- for example, that may
12 already be in the public domain -- there would be a
13 corresponding right to seek leave of court for a further order
14 to address that circumstance.

15 THE COURT: I don't think that's improvidently
16 granted. At the time, there weren't specific documents
17 enumerated as being subject to the protective order. The fact
18 that some document that was designated as confidential pursuant
19 to the protective order later became public doesn't mean that
20 the protective order was improvidently granted at the outset.
21 So I don't think that's a fair comparison.

22 While we're talking about improvidently granted, as
23 you know, the general requirements for talking about whether
24 the Court should modify the order is absent a showing of
25 improvidence in the grant of the order or some extraordinary

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1 circumstance or compelling need. I don't think there's anyone
2 here who's arguing that the order was initially granted
3 improvidently. So the question on the table is whether this is
4 an extraordinary circumstance or a compelling need. Is that
5 right?

6 MR. COOPER: Well, your Honor, I think that there are
7 four factors to be taken into account, but those are definitely
8 two of them, and I used the words "improvidently granted"
9 perhaps inartfully, but only to highlight the fact that the
10 documents and materials that are now the subject matter we're
11 talking about weren't given the particularized analysis that
12 the Second Circuit's decision calls for.

13 THE COURT: That's in hindsight, counsel. Very few
14 protective orders detail specifically each document that is
15 covered by it at the outset. That's apples and oranges.

16 And the four factors you're talking about are the
17 factors that the Court considers in determining whether
18 extraordinary circumstances exist, right?

19 MR. COOPER: That is true, your Honor.

20 THE COURT: Okay.

21 MR. COOPER: And in addition, the compelling --

22 THE COURT: Compelling circumstance, need, right.
23 Okay.

24 MR. COOPER: And I would argue, your Honor, that there
25 is a compelling need here. And without repeating it, the first

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1 is for Professor Dershowitz to not be materially disadvantaged
2 in his defense and prosecution of this case while facing an
3 adversary who has in her custody, possession, or control all of
4 the materials that he seeks. So that is the first of
5 compelling need.

6 Secondly, your Honor, especially with regard to the
7 more recent discovery standard related to proportionality,
8 there really is a compelling need for efficiency here, which
9 again, I won't repeat, but Professor Dershowitz has to defend
10 himself, and he will defend himself, by proving the truth of
11 what it is that he is alleged to have defamed Ms. Giuffre
12 about. And if one were to look at paragraphs 14, 17, 18, and
13 53, just by way of example, Ms. Giuffre alleges that Professor
14 Dershowitz has defamed her by calling her a serial liar who's
15 committed perjury as part of an extortion scheme against
16 multiple wealthy third parties and individuals. She uses those
17 words throughout. Paragraph 53, she accuses Professor
18 Dershowitz of being in a conspiracy with Ms. Maxwell and
19 Jeffrey Epstein in order to conceal their sex trafficking
20 organization. In light of those allegations, and in light of
21 the testimony already given directly on those points that have
22 been injected into this lawsuit by Ms. Giuffre, and
23 Mr. Dershowitz's, frankly, constitutional right to prove that
24 his speech is protected because it's true, he has a compelling
25 need for access to all of these materials. It is, we believe,

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1 based -- and we are looking, frankly, at the summary judgment
2 record that is public record to gather a list of approximately
3 13 or 14 names of people that we are able to discern were
4 deposed in the *Maxwell* case. They are likely all to have
5 information that is relevant to Professor Dershowitz's defense
6 and counterclaims here, and that includes Ms. Maxwell, who, at
7 least according to the publicly available records, appears to
8 have been deposed at length. And the idea that Ms. Giuffre
9 would go forward in this case with Ms. Maxwell's deposition
10 transcript available to her while we must depose her anew
11 strikes me as inconsistent with the purpose of discovery,
12 fairness, due process, and the like, and I would respectfully
13 submit, your Honor, that all of that constitutes not just a
14 compelling need but a need to consider judicial efficiency and
15 proportionality over form in this instance.

16 THE COURT: It might be efficiency, but I'm not sure
17 it's proportionality, but okay.

18 Who else wants to be heard, please?

19 MS. MENNINGER: Your Honor, this is Laura Menninger
20 again on behalf of Ms. Maxwell.

21 THE COURT: Yes, ma'am.

22 MS. MENNINGER: We were unaware that Ms. Giuffre's
23 current counsel had access to this confidential information,
24 and frankly, in my opinion, they do not have it properly under
25 the protective order because they were not actively litigating

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1 the case when it was a case, which is what the protective order
2 covered, and I believe that the appropriate remedy for that
3 problem is that they return to Boies Schiller any materials
4 that they improperly had access to, we object strongly to their
5 current access, and I think that would cure the inequity that
6 Mr. Cooper has just described in one party having access to the
7 records while the other does not.

8 Moreover, your Honor, some of the points that
9 Mr. Lewin made in his very carefully thought-through letter I
10 would just reraise at this point, which include the fact that
11 even though Mr. Dershowitz is stating that he will abide by the
12 protective order, as we all understand, the point at which he
13 attaches one of those documents to a pleading, it then is
14 transformed into a judicial document, most likely, and loses
15 its confidential status. So in my opinion, it appears the fox
16 would be guarding the henhouse with respect to whether these
17 materials remain confidential or don't.

18 And finally, I did not hear anything in Mr. Cooper's
19 response that addressed the Court's question with regard to the
20 rights of the third parties or the nonparties from whom this
21 discovery was taken. I think it is speculative to suggest that
22 the issues in the *Maxwell* case are coextensive with those that
23 are present in the *Dershowitz* case. It is speculative to
24 believe that the parties were even asked about Mr. Dershowitz,
25 or Professor Dershowitz, in those depositions. And without

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1 going into the content of all the sealed materials, I can
2 represent that that is far from the case.

3 I did not hear anything truly compelling beyond the
4 fact that Professor Dershowitz's current counsel does not want
5 to undertake the same types of discovery efforts that
6 Ms. Maxwell had to do in order to defend herself. They have
7 the names of the witnesses, they've just told you, they have
8 all of Ms. Giuffre's production from the *Maxwell* case, and so
9 they have access to any other witnesses that were mentioned at
10 any of those discovery items, and they could undertake the same
11 efforts but tailored to the needs of their particular case,
12 which are not the same as those that were present in the
13 *Maxwell* case.

14 THE COURT: Thank you.

15 Who else wants to be heard, please?

16 MR. LEWIN: Judge, this is Nick Lewin on behalf of the
17 nonparties. May I be heard at this point?

18 THE COURT: Yes, sir.

19 MR. LEWIN: Judge, to pick up on where I believe
20 Ms. Menninger left off, actually where your Honor left off, you
21 suggested, Judge, that it may be efficient but is not
22 proportional, and we would submit it's neither. Mr. Cooper is
23 attempting to sort of merge these issues together. First he
24 suggests that all they're asking is that Mr. Dershowitz "sign
25 on to" the existing protective order. Well, there's no such

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1 thing, Judge. The protective order related to a different
2 case, involving different parties, from a different time, with
3 different lawyers, and different negotiations. That's not how
4 protective orders work. These are distinct cases. John Doe
5 obviously is not a party in either case, so we don't have a
6 sense of overlap. But it is, frankly, hard to imagine that the
7 overlap is so significant that every single piece of paper,
8 every single filing, every single page of discovery material is
9 relevant in one case simply because it exists in the other
10 case. In fact, every indication is, Judge, that that is just
11 not true.

12 And the point we tried to make, Judge, is not just
13 about no further briefing; we think your Honor should deny
14 Mr. Dershowitz's application now and not permit further
15 briefing. And the reason is not only that it would not be a
16 good use of this Court's time to entertain further briefing on
17 this issue, but that denial now would substantially protect the
18 ongoing unsealing review being conducted pursuant to the
19 protocol. To allow this litigation now to continue casts a
20 substantial shadow over the unsealing process your Honor has
21 put into place with respect to the *Maxwell* documents; it raises
22 real and significant questions about whether and how a nonparty
23 would want to participate in that process, and whether any
24 participation would be undermined or influenced by the fact
25 that there is still active litigation over whether

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1 Mr. Dershowitz is going to be able to import them.

2 Also, the last point I'd make, Judge, is that it's a
3 *non sequitur* really to suggest that Mr. Dershowitz's
4 constitutional rights would be prejudiced. This is not about
5 whether or not Mr. Dershowitz has access to discovery. He has
6 every mechanism available to every party in every federal case
7 available to him in the context of his own case. The question
8 is whether it makes sense for this Court to import en masse all
9 the filings and discovery materials that your Honor is
10 confronting the challenges about now into a second case. And I
11 think when you look through, in order to do that, your Honor
12 would have to revise, substantially revise the protective order
13 and the four factors that guide it. None of them, none of them
14 in this case favor that kind of revision.

15 The reliance here was reasonable. Judge Sweet found
16 it, and your Honor should find it, and that should end the
17 story and allow these cases to proceed on parallel tracks, to
18 allow the protocol to continue to function in this case, and
19 allow Mr. Dershowitz to do whatever he would do in the normal
20 course to gain discovery in his case.

21 THE COURT: What do you say, Mr. Lewin, to
22 Mr. Dershowitz's suggestion that he ought to have, for example,
23 Ms. Giuffre's depositions in the *Maxwell* case, at the very
24 least in order to gauge her credibility with respect to her
25 upcoming testimony in this case? What do you say to that, as

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1 an example?

2 MR. LEWIN: Judge, I say a few things. The first is,
3 I don't know what's in the deposition transcript and so it's
4 impossible for me to look at that deposition transcript and
5 answer that question. I would assume, though I don't know,
6 that both Ms. Maxwell and Ms. Giuffre designated a portion of
7 that transcript as confidential, and were I the lawyer -- and
8 again, your Honor, I'm disadvantaged by not knowing what's in
9 the transcript or what was asked -- the questions that I would
10 ask Ms. Giuffre in the context of a deposition if I were
11 Maxwell's counsel might differ based on whether I had
12 reasonably relied on the deposition transcript being designated
13 confidential and subject to the protective order. So it's not
14 simply that that transcript should be released. I think there
15 are real privacy interests. And again, I don't represent and
16 have not communicated with Ms. Maxwell's counsel, but
17 presumably both parties operated in reasonable reliance on the
18 protective order in fashioning the decision to participate in,
19 the decision to object to, and the progress of those
20 depositions, Judge, and the transcripts that resulted.

21 THE COURT: Okay. I guess I'm not asking you about so
22 much the substance. Needless to say, I have not read or
23 memorized those depositions either. But shouldn't, in the
24 normal course, a litigant be able to get an adversary's prior
25 sworn testimony on the same subject matter? So that's really

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1 the question I'm asking. Why shouldn't that be the case here?

2 MR. COOPER: Your Honor, if I may, this is Mr. Cooper.
3 Forgive me for interrupting, but I just wanted to point out
4 that at the initial status conference, we raised this issue,
5 and you ordered Ms. Giuffre to turn over her deposition
6 transcript in the *Maxwell* case as part of initial discovery and
7 she has done so, and --

8 THE COURT: Okay. Then let's do a different example.
9 My real question is: Isn't there some kind of more narrowly
10 targeted way -- and, you know, Mr. Cooper, maybe you're the guy
11 to ask this to -- isn't there some more narrowly targeted way
12 to do this? Mr. Lewin and Ms. Menninger are probably correct
13 that not every document or every deposition in the *Maxwell* case
14 is relevant here. For example, why wouldn't you say, produce
15 all testimony with respect to Mr. Dershowitz, or documents with
16 respect to Mr. Dershowitz? Why isn't that more narrowly
17 tailored than every single piece of discovery in the *Maxwell*
18 case?

19 MR. COOPER: So let me answer that by making the
20 following points, your Honor:

21 First, as I know the Court recognizes, because I said
22 it, Professor Dershowitz obviously wants all information to be
23 out there, to be public, etc., because he believes it
24 exonerates him, and that's the truth.

25 THE COURT: Thank you for that, counsel, but let's get

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1 on to what we're talking about.

2 MR. COOPER: Secondly, your Honor, again, I go back to
3 what Ms. Giuffre has placed at issue in this case and, frankly,
4 what she's already testified to in a deposition that I'm not
5 allowed to talk about, and certainly will do on a public
6 record. But her central assertion -- and this is public
7 record -- is that Professor Dershowitz conspired with Maxwell
8 and with Epstein to conceal their sex trafficking operations
9 and that she is suing Professor Dershowitz for falsely stating:
10 (1) that she had sex with Professor Dershowitz, or saying that
11 she didn't have sex, but it goes beyond that; she is also suing
12 Professor Dershowitz and saying he was untruthful when he
13 contended publicly and stated that what she was doing, along
14 with her lawyers, was an effort to extort Leslie Wexner and
15 other wealthy third parties. She has placed at issue whether
16 there is any truth or not to all of that, and as a result,
17 Professor Dershowitz, who is at this moment -- and as his
18 counsel at this moment does not have access to the materials
19 beyond seeing the names of individuals whose testimony was
20 cited in the summary judgment record. But by virtue of lining
21 up the allegations in the *Maxwell* case with the allegations in
22 the Dershowitz case and noting that literally in well over a
23 dozen paragraphs -- they are verbatim with each other, because
24 they refer to the same alleged conspiracy, the same quality and
25 type of alleged defamation -- it goes way beyond simply the

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1 issue of any contact between Ms. Giuffre and Professor
2 Dershowitz. So that suggested tailoring is, respectfully, your
3 Honor, so narrow that it would preclude Professor Dershowitz
4 from establishing the truth of the defamations as to which he's
5 being sued.

6 I would offer, your Honor, that there be entered an
7 order that Professor Dershowitz -- and your Honor can construct
8 the order, the Court has complete discretion to order that
9 Professor Dershowitz abide by the *Maxwell* protective order, as
10 his counsel will do as well, but that the materials
11 presumptively to be identified and turned over that are in the
12 hands of -- right now we're talking about a motion to compel
13 materials from Ms. Giuffre, but that are in her hands, and to
14 the extent that someone like John Doe's counsel is aware of a
15 particular issue applicable to his client, that it be raised
16 with the Court and we be allowed to respond to it.

17 THE COURT: How is he going to know? How is he going
18 to know?

19 MR. COOPER: Because counsel for John Doe, as we sit
20 here today, is already aware of what materials related to his
21 client exist that are going to be turned over because
22 presumably they were the ones that designated them
23 confidential.

24 MR. LEWIN: Judge, this is Nick Lewin. You make the
25 exact right point. There is a reason we have this enormously

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1 complicated unsealing protocol in the *Maxwell* case. And
2 Mr. Cooper's assertion is actually wrong. And I only represent
3 one party that may or may not be identified in these materials,
4 and as your Honor knows better than I do -- in fact, literally
5 better than I do -- there are dozens.

6 I think it's important, Judge, if I may have just a
7 minute to make a point, that, let's be clear, Mr. Dershowitz's
8 application is to permit him to make a motion to compel Giuffre
9 and others to produce to him "all filings and discovery
10 materials, including third-party discovery." It literally
11 encompasses every page from the *Maxwell* case. Your Honor asked
12 about one potential document, which is Ms. Giuffre's
13 deposition, which, again, I don't have access to, I have not
14 read. First of all, I don't know, Judge, if in the ordinary
15 course a litigant in a different case would have access to
16 prior statements of an opposing party that are under seal, but
17 what this all tells us, Judge, and all the complexity and the
18 months your Honor has spent fashioning the protocol, is that
19 your Honor should deny this motion, deny it now, deny
20 Mr. Dershowitz's motion now, and then deal with applications to
21 the extent they can't be resolved by the parties in the
22 *Dershowitz* case on an individualized basis. It's how cases
23 work. And the idea that in a case -- it's ironic that in a
24 case with this many issues, the *Maxwell* case, regarding
25 third-party rights, that we would seek to simply import them en

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1 masse into another case, it just doesn't make sense, Judge, and
2 there is no adequate way to protect nonparties. And there was
3 reasonable reliance, as we set out in our letter, which I won't
4 repeat here.

5 And thank you, Judge, for allowing me that time to
6 speak.

7 THE COURT: Yes, sir.

8 Who else?

9 All right, counsel. I think we've probably exhausted
10 ourselves.

11 I will reserve decision and be back to you very
12 promptly. Thank you for being available on the phone and for
13 speaking so graciously so as not to speak over each other.
14 Thank you, counsel.

15 May I ask my law clerks and interns to call in,
16 please.

17 Thank you, folks.

18 ALL COUNSEL: Thank you, your Honor.

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