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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

3 VIRGINIA L. GIUFFRE,

4 Plaintiff,

New York, N.Y.

5 v.

15 Civ. 7433 (RWS)

6 GHISLAINE MAXWELL,

7 Defendant.

8 -----x  
9 February 6, 2019  
10 12:15 p.m.

11 Before:

12 HON. ROBERT W. SWEET,

13 District Judge

14 APPEARANCES

15  
16 BOIES, SCHILLER & FLEXNER, LLP  
Attorneys for Plaintiff

17 BY: SIGRID S. McCAWLEY

18 HADDON, MORGAN & FOREMAN, P.C.  
Attorneys for Defendant Maxwell

19 BY: JEFFREY S. PAGLIUCA  
20 LAURA A. MENNINGER

21 EMERY CELLI BRINCKERHOFF & ABADY, LLP  
Attorneys for Intervenor Dershowitz

22 BY: ANDREW G. CELLI  
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1 (Case called)

2 THE COURT: How nice to see you all again.

3 MR. PAGLIUCA: Good afternoon, your Honor.

4 THE COURT: I have the sense that somehow this  
5 litigation will never die. However, we will see.

6 Yes. I will hear from the movant.

7 MR. PAGLIUCA: Good afternoon, your Honor. Jeff  
8 Pagliuca and Laura Menninger appearing on behalf of Defendant  
9 Maxwell. This is our request for the Court's help in  
10 implementing paragraph 12 of the protective order entered by  
11 this Court March 17, 2016.

12 This case settled, as the Court may remember, in May  
13 of 2017, much to everyone's happiness, including the Court's,  
14 and was dismissed shortly thereafter. Two times since May we  
15 have asked for agreed upon protocol with the plaintiff's  
16 counsel to finish up destroying or exchanging-back confidential  
17 documents. The first request was shortly after the case was  
18 dismissed in July of 2017. That request was rejected by  
19 plaintiff's counsel. We asked again about a year later, that  
20 was also rejected.

21 The plaintiffs offer three reasons why they don't  
22 believe they should have to comply with the Court's order. The  
23 first is according to plaintiffs the case is not concluded.  
24 This Court has held the case concluded, the case has been  
25 dismissed with prejudice, and really the only thing left to do

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1 is to implement paragraph 12 of the protective order.

2 The plaintiffs also argue the Court doesn't have  
3 jurisdiction to hear this matter. Clearly, it does. This is  
4 an order of the Court that the Court retains jurisdiction over  
5 to implement and there is no merit to that argument.

6 The third argument, as I understand it from the  
7 plaintiff, is that there is really no prejudice and we can sort  
8 of let this linger in limbo. I think that is a fallacy, your  
9 Honor, in that the longer this case goes on, in my view, the  
10 more likely it is that we are going to have some disclosure of  
11 protected information in violation of this Court's order. I  
12 don't have control over anyone that the plaintiff has  
13 disseminated this information to pursuant to the protection  
14 order, and the longer this goes on the more likely it is that  
15 either inadvertently or overtly this information will get  
16 disclosed.

17 It is time to end this litigation with finality and  
18 this is the last thing left to do. We would ask that the Court  
19 enter an order directing that all counsel in this case comply  
20 with the Court's orders entered almost three years ago and that  
21 we begin the protest of either exchanging or destroying these  
22 confidential materials. We have proposed that the information  
23 simply be destroyed and documented by affidavit which seems to  
24 me to be the most expeditious way to deal with it.

25 I guess finally, your Honor, the claim I think is that

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1 because there are three appeals related to documents that were  
2 filed with the Court that somehow they need to hold on to these  
3 documents and I guess I haven't heard any reason why documents  
4 in the possession of the parties and witnesses have anything to  
5 do with the discrete issues that are currently on appeal in the  
6 Second Circuit, and so I think at this point Court should  
7 simply direct that everyone follow Court's order.

8 Thank you.

9 MS. McCawley: Good afternoon, your Honor. Sigrid  
10 McCawley on behalf of Virginia Giuffre.

11 Your Honor, Ms. Giuffre's position is simple and is  
12 supported by law. It is that the protective order in this  
13 case, while it stands, should not be altered to enforce  
14 destruction of evidence when there are three appeals pending  
15 with respect to the documents at issue in this case. As your  
16 Honor knows there are three appeals; Mr. Cernovich has one,  
17 Mr. Dershowitz; and then the Miami Herald has an appeal. They  
18 all relate to the underlying documents in this case that were  
19 marked at issue under the protective order. So, that is our  
20 position.

21 There are cases that we have cited to you in the  
22 Southern District of New York, for example, the Standard  
23 Charter case which is a 2008 case, Westlaw 199537. That case  
24 had the exact issue. One of the parties was moving to enforce  
25 the protective order and saying that the documents needed to be

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1 destroyed and there were appeals pending and the Court said  
2 simply that in the Southern District of New York, when there  
3 are appeals pending and there is a protective order, it is  
4 prudent to wait until the appeal has completed before requiring  
5 the destruction of evidence in the case.

6 So, that is all that we are asking, your Honor. We,  
7 as you know, Ms. Giuffre produced thousands and thousands of  
8 pages of documents in this case and also had non-parties  
9 produce documents as well that were marked confidential.  
10 Ms. Maxwell comes to the Court, while she has not herself  
11 returned or destroyed any of Ms. Giuffre's documents,  
12 requesting a motion and sanctions against us for not doing the  
13 same. We simply had meet and confers with them saying that we  
14 would follow the order. We thought it was prudent to wait  
15 until the appeals were resolved because once something is  
16 destroyed you cannot recreate it.

17 So, that was our position, your Honor, that's still  
18 our position, we believe it is the prudent course for this  
19 Court.

20 With respect to jurisdiction, we cited to you the  
21 Shapiro case which is one of your prior cases that simply says  
22 that when there is an appeal pending and the underlying issue  
23 comes again before the Court, the Court does not have  
24 jurisdiction to hear that appeal. Whether or not that is the  
25 case, we believe that it is prudent in this circumstance to

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1 wait until the Court of Appeals in the Second Circuit has ruled  
2 on whether or not those documents, whether or not there is  
3 going to be a change to the status of those documents, whether  
4 or not they're unsealed or kept confidential, etc.

5 Your Honor, I note that Mr. Dershowitz's counsel is  
6 here as well. I am happy to address the letter submitted if  
7 you want me to. That was not noticed for today but I can do  
8 that, if your Honor wants me to.

9 Thank you, your Honor.

10 MR. CELLI: Good afternoon, your Honor. I am Andrew  
11 Celli, I represent Alan Dershowitz.

12 We are here today to continue the position that  
13 Mr. Dershowitz has always had in this case which is the  
14 position in favor of transparency and openness. We are  
15 intervenors in the case, we are appellants in the case and, you  
16 know, life makes strange bedfellows, we actually are in  
17 agreement with Ms. Giuffre's counsel that the case is ongoing  
18 and we don't believe there ought to be destruction order at  
19 this point.

20 I want to be available for the Court for questions  
21 about our appeal. I think the Court is aware we initially are  
22 seeking unsealing of three unique categories of records. We  
23 subsequently filed a second appeal that relates to the entire  
24 summary judgment record which that lines up with  
25 Mr. Cernovich's application and appeal, and then of course the

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1 Miami Herald has an application to unseal the entire record of  
2 materials that have been filed with the Court.

3 Just so the Court knows, at last, the Circuit has set  
4 this down for argument; it will be argued on March 6th, your  
5 Honor.

6 Thank you.

7 MR. PAGLIUCA: Your Honor, would I like to just  
8 respond briefly with regard to the appellate issue.

9 THE COURT: Sure.

10 MR. PAGLIUCA: The three appeals deal solely with  
11 documents filed with the Court. The three appeals do not deal  
12 with documents maintained by the parties.

13 THE COURT: I'm not sure that -- one might have  
14 thought that every piece of paper in this case would be  
15 indelibly etched in my mind but since there were thousands of  
16 pieces of paper that's not true and I don't know now and I, in  
17 a sense, do not want to be forced to look but perhaps I will  
18 have to.

19 My best recollection is that the summary judgment  
20 briefing included reference to papers other than just the  
21 summary judgment papers but also depositions, etc., etc., that  
22 supported the two parties, the different positions that the  
23 parties had.

24 MR. PAGLIUCA: That is true, your Honor.

25 THE COURT: That's what I thought. Yes.

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1 MR. PAGLIUCA: All of those papers were attached or  
2 submitted in connection with the summary judgment filings; they  
3 weren't, oh, somebody has it in their office.

4 THE COURT: So, it seems to me -- well, that raises  
5 for me the question about the decision of the Court of Appeals  
6 with respect to the validity of my sealing order.

7 MR. PAGLIUCA: I think what is --

8 THE COURT: I mean the extent of it.

9 MR. PAGLIUCA: Yes. I understand, your Honor. But  
10 assume for a moment that the Court of Appeals disagree with  
11 your Honor and I think it would -- the only appeal that would  
12 really have impact would be the Miami Herald appeal which deals  
13 with a larger volume of documents than the other appeals.

14 THE COURT: Well, except to the extent that for the  
15 reasons we just mentioned, the Dershowitz appeal and the other  
16 one on the summary judgment may also deal with the larger group  
17 of documents.

18 MR. PAGLIUCA: True. All of those documents, however,  
19 were submitted to the Court as part of any of some argument or  
20 pleading and so what we are asking you to do, your Honor, is to  
21 direct the parties, pursuant to paragraph 12, to destroy the  
22 documents that we have in our possession. Certainly it would  
23 not be difficult, frankly, to carve out whatever is at issue  
24 and is maintained by the Court because we know what we  
25 submitted to the Court. The parties know that. And there is a



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1 large volume of other material that has not been submitted to  
2 the Court in any fashion and is not a part of any appeal in  
3 this case and so we understand that --

4 THE COURT: But would be covered by --

5 MR. PAGLIUCA: Paragraph 12 of the protective order,  
6 correct.

7 THE COURT: Yes, but also be part of the scope of the  
8 Miami Herald decision in the Court of Appeals.

9 MR. PAGLIUCA: I don't believe so, your Honor, because  
10 I believe that appeal as well as the Cernovich appeal simply  
11 relate to an issue of whether or not the Court files would be  
12 maintained, sealed, not the parties' files which are two  
13 different things. So, those appeals deal with what was  
14 submitted to the Court, not as what is maintained by the  
15 parties and that's a significant distinction, your Honor.

16 THE COURT: I hear you. Thank you, all. I will  
17 reserve decision.

18 Anything further?

19 MS. McCAWLEY: No, that's fine, your Honor.

20 MR. CELLI: No, your Honor.

21 THE COURT: Thank you very much. I will reserve  
22 decision.

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