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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 VIRGINIA L. GIUFFRE,

4 Plaintiff,

5 v.

15 CV 7433 (RWS)

6 GHISLAINE MAXWELL,

7 Defendant.

CONFERENCE

8 -----x
9 New York, N.Y.
March 16, 2017
1:05 p.m.

10 Before:

11 HON. ROBERT W. SWEET,

12 District Judge

13 APPEARANCES

14 BOIES SCHILLER & FLEXNER
15 Attorneys for Plaintiff
16 BY: SIGRID S. McCAWLEY

17 HADDON MORGAN AND FOREMAN
18 Attorneys for Defendant
19 BY: JEFFREY S. PAGLIUCA
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1 THE COURT: First order of business from me, have you
2 all reached any decision as to how we're going to conduct the
3 trial with respect to the matters covered by the protective
4 order?

5 MS. McCAWLEY: Your Honor, Mr. Pagliuca and I were
6 just discussing that, the issue of the protective order.

7 There's two points on that, and he can address them as
8 well.

9 The protective order itself that we entered in the
10 case does have a paragraph in it that addresses the trial. It
11 provides that -- that's just for reference, that's going to be
12 document 62, and it's in paragraph 13. It says: The
13 protective order shall have no force and effect on the use of
14 any confidential information at the trial in this matter.

15 So, full disclosure, I want to let you know that
16 that's what the protective order currently says.

17 The plaintiff would like to request that names of
18 victims, of individuals who consider themselves to be a victim
19 of sexual abuse, a pseudonym be able to be used for them and
20 any identifying information, for example, their Social Security
21 number or an address be able to be protected for those that are
22 coming to testify. I know that makes it a little bit more
23 difficult, but if we plan that in advance with initials or a
24 pseudonym for those individuals to garner that protection for
25 them, that is one consideration we would like with respect to

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1 the trial. But I understand that all other matters would have
2 to be -- obviously it's a public trial and so we would not be
3 able to protect the other specifics.

4 THE COURT: Have you all reached an agreement to that
5 effect?

6 MS. McCAWLEY: No, your Honor. We were just
7 discussing that. That was what I had proposed to Mr. Pagliuca.

8 MR. PAGLIUCA: Your Honor, I certainly am not opposed
9 to further discussions about this issue. I think I would need
10 to know who we're talking about in particular as to the
11 witnesses. So I think we'll be able to deal with this, your
12 Honor. We'll just need to have some more -- a little bit of
13 detail that the parties are going to need to have to talk about
14 before we work something out.

15 Here's my concern, your Honor, I guess: If there's a
16 witness that shows up in court, I think it's prejudicial to the
17 defendant if we're using initials or things like that, because
18 it implies that something untoward has happened.

19 THE COURT: Correct me if I'm wrong, anybody who
20 testifies is going to have to state their identity --

21 MR. PAGLIUCA: Right.

22 THE COURT: -- and whatever. It seems to me, that's
23 clear. Maybe I'm wrong about that.

24 There are occasions which we're all familiar with from
25 security reasons and whatever that sometimes people don't, but

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1 that's certainly the exception. And I would think that that
2 would not be the case, unless there is a particular application
3 for a particular person.

4 How does that sound to you all?

5 MR. PAGLIUCA: That's what I think, your Honor, what
6 you just said.

7 MS. McCAWLEY: Your Honor, if I could, I'd like the
8 opportunity -- because there are only a few of the witnesses
9 that fall into this category --

10 THE COURT: Okay. That's one thing. Let's sort of
11 understand that that's -- without a specific application, and I
12 would think that that would be done sufficiently in advance so
13 that we can consider it not -- in other words, pretrial.

14 MS. McCAWLEY: Yes.

15 THE COURT: And I was hoping we'd have all this
16 resolved today. So maybe you all could think about that and
17 maybe we can cover that next week, who knows.

18 MS. McCAWLEY: Yes, your Honor.

19 THE COURT: As far as exhibits are concerned, I take
20 it that the same would be true with exhibits; that everything
21 goes unless somebody makes a particular application.

22 MS. McCAWLEY: Yes, your Honor, that's my
23 understanding.

24 MR. PAGLIUCA: That's my understanding as well, your
25 Honor.

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1 THE COURT: All right.

2 Well, that's some degree of clarification. And if you
3 all manage to do something better than that, I'd be grateful.

4 Now, aside from that, Mrs. Lincoln, how was the play?

5 I guess I should hear from the plaintiff about how
6 this -- the issue here, as I see it, is the handwriting
7 expert -- well, let's assume just for the moment that the black
8 book gets in. If the black book gets in, what's the
9 handwriting expert going to testify to?

10 Forgive me, I lost --

11 MS. McCAWLEY: Sure. That's fine.

12 Let me give you a little bit of background.

13 We retained the handwriting expert in an abundance of
14 caution because the black book, which is a telephone directory,
15 has at the beginning of it handwriting on various pages by
16 Alfredo Rodriguez. So in order to make sure we could get the
17 document into evidence, we retained the handwriting expert to
18 be able to say the handwriting on these pages matched the other
19 documents that he testified under oath were his handwriting on
20 checks and things of that nature. So that's why there is any
21 issue with handwriting, only because the document itself on the
22 front of it, on the front few pages, has that handwriting. So
23 she would simply be testifying --

24 THE COURT: That it's Rodriguez --

25 MS. McCAWLEY: Yes.

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1 THE COURT: Okay.

2 MS. McCAWLEY: That it matches his handwriting, it's
3 an exact match on his handwriting, yes. That would be the
4 purpose of her testimony.

5 THE COURT: So the objection on the business record,
6 as I understand it, is we don't have anybody who can testify
7 that it's a business record, or do we?

8 MS. McCAWLEY: Your Honor, I would say that we
9 absolutely do.

10 Let me just, if it's all right, preview the evidence
11 for you, since I believe that's the purpose of this hearing, so
12 you have an appreciation, first of all, for why the black book
13 is such a critical piece of evidence in the case, in our view,
14 of course, but also who can testify about it.

15 So the black book, as I said, is a telephone directory
16 of all the names and numbers of anybody who was associated with
17 either the defendant or Maxwell -- of the defendant or Epstein.
18 It was kept at their home; they had various homes, but the main
19 home in Palm Beach is where this document was taken from. It
20 was for purposes of the house staff being able to use to
21 contact people or when people called in, so it was a reference,
22 a telephone directory reference.

23 So what testimony do we have on that?

24 We have Maxwell herself -- and I'm going to review her
25 testimony; I have it for you here today -- in her deposition

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1 identified the black book, when I handed it to her as an
2 exhibit, as the stolen document. So she -- and I'll read that;
3 it's very clear -- authenticates that document. She even asked
4 me how did I get it. So that testimony is pretty powerful.

5 We then have two different house staff that have
6 testified about this document.

7 The first is Juan Allessi. He testified in this case
8 back in June and he was given the exhibit. He was the butler
9 for a period of time in Palm Beach. So he was responsible to
10 help with the management of the house. And he identified the
11 document, identified names of individuals in the document,
12 young girls who came over to provide these massages. There's a
13 section in the directory that's called "Florida Massages" that
14 has numbers, names of females, some parents' numbers. We
15 allege that there are underaged individuals in that directory
16 with their phone numbers. So we reviewed that with him.

17 He has testimony about the fact that the black book
18 was something that was kept in the course of their work. It
19 was something that was on Maxwell's desk. So I'm going to
20 review that testimony for you.

21 Then we have Alfredo Rodriguez. Now, Mr. Rodriguez
22 is, unfortunately, deceased. He testified in the *Jane Doe*
23 cases about the fact that there was this what they called the
24 black book, which was a telephone directory. So we have his
25 testimony.

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1 We also have at trial Jeffrey Epstein, Sara Kellen,
2 and Nadia Marcinkova.

3 Now, at this point, we have been told that they are
4 planning to take the Fifth on everything. But this is a
5 telephone directory; we may be able to solicit information from
6 them about the directory itself.

7 So that's the universe of the individuals that we
8 anticipate will testify about this. If you don't mind, if I
9 can just pass you up my binder that has the testimony in it.

10 THE COURT: Sure.

11 MS. McCAWLEY: So what you're going to see in here is
12 the document itself, and then you're going to see the
13 testimony.

14 So the testimony, for example, Ms. Maxwell, I asked
15 her during her deposition: Was there a hard-copy book as well
16 as something on the computer or was there only electronic
17 information on the phone numbers?

18 This is after I handed her the document.

19 She said: I can only testify to what I know
20 obviously. And I believe that this is a copy of the stolen
21 document. I would love to know how you guys got it.

22 I said: Next, I'm asking you during the time you
23 worked for Jeffrey Epstein, was there a hard-copy document of
24 any kind that kept phone numbers for Jeffrey Epstein if he
25 needed to contact someone?

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1 "A. The stolen document I have in front of me, that's what
2 you're referring to.

3 "Q. So was there -- during your time, was there no other --
4 you mentioned information on a computer. Was there any
5 hard-copy document you would refer to to find someone's number?

6 "A. You have the stolen document in front of you.

7 "Q. You had access to this when you worked for Jeffrey
8 Epstein?

9 "A. This, I believe the book was stolen. That was the hard
10 copy, whatever was there.

11 "Q. So when you were working for Jeffrey Epstein, you were
12 able to access this book?

13 "A. This book, if this is what it is, I believe it is the
14 stolen document from his house."

15 So that is defendant's testimony when she reviews the
16 exhibit that we gave her, which is the black book, during her
17 deposition. She clearly authenticates it.

18 THE COURT: When you say "the black book," there's a
19 question about copy and so on. Do you have the original?

20 MS. McCAWLEY: We have a copy of what was taken.

21 When it's referred to as "the black book," I believe
22 that's because that's sort of colloquially what they referred
23 to -- the house staff referred to as this large document; they
24 called it the black book. And Juan Allessi calls it that as
25 well, so we've used that term in the course of this. But it's

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1 really a telephone directory.

2 THE COURT: Yes, yes, I understand that. But it's not
3 the -- what you have is not the original.

4 MS. McCAWLEY: We have the copy.

5 The course of events is that Alfredo Rodriguez, who
6 was also a butler for Mr. Epstein and the defendant, took the
7 document when he left his employment, stole it, left with it.
8 And then he tried to sell that document. In the course of
9 trying to do that, to sell it, there was an undercover sting,
10 because they knew he was trying to sell evidence basically in a
11 case. And so they obtained the document, and then they
12 produced it in the civil discovery in the *Jane Doe 102* cases in
13 Florida. So it was a document in that case -- in discovery in
14 that case as well, and that's why we have testimony on --

15 THE COURT: Was it introduced in that case?

16 MS. McCAWLEY: It was in the course of depositions.
17 Those cases were settled, I believe, your Honor, so I don't
18 think there was a trial on any of those issues.

19 But to be clear on the fact that -- because I
20 understand the concern over this, and you'll hear from
21 Mr. Pagliuca that, you know, Oh, well, it looks like it's
22 photocopied and these are differences. Defendant didn't
23 testify and we have not heard yet that any of the information
24 in the book is wrong. In other words, you'll see, for example,
25 on page 41, there's a list -- and I've highlighted it for you,

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1 flagged it -- of Maxwell's family members, all of her family
2 members, their London phone numbers, her Yorkie's veterinarian
3 is list in there. There's no debate that these numbers of
4 these individuals -- Prince Andrew's number is in there -- all
5 of this information in the black book is incorrect, no one is
6 saying that. What they are saying is, Well, I don't know how
7 you got it. And I want to say to Maxwell, Why didn't you
8 produce it in this case? It was on your computer. Where is
9 it? Why do we have to fight over a document that should have
10 been produced in this matter?

11 So, your Honor, I think the integrity of the document
12 is there. But I also want to tell you that there's a couple --
13 when we look at it from an evidentiary perspective, there are a
14 couple of reasons why it's important, and there are a couple of
15 reasons why it doesn't have to come in for the truth of the
16 matter asserted.

17 In other words, the fact that, for example, Virginia,
18 my client's number is listed in the message section, whether or
19 not that number is correct doesn't matter. What matters is the
20 fact that there was information in this book that Maxwell was
21 knowledgeable of at the time she made her defamatory statement.
22 So not offered for the truth of the fact that the number was
23 one, two, three, four, but for the fact that she was aware of
24 this information.

25 So there's a couple ways this can come into evidence.

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1 Of course, we would like to propose it for the truth of the
2 matter asserted, and I think we can do that under the
3 exceptions that I'm going to talk about here today. But there
4 are also other ways that it can get in, be admissible not for
5 the truth, but to show her awareness of it.

6 So we talked about Maxwell's testimony.

7 The other person I think is really key, because he's
8 basically an uninterested party, is Juan Allessi. So Juan
9 Allessi was the house staff member that we deposed in this
10 matter. He identified the book. That's also in the document
11 that I gave you. What he says -- he's shown the exhibit. And
12 he says: This was a Rolodex. It was a blue book. It was
13 called the blue or the black book. I think it was thick.

14 And he says -- okay.

15 He says: With these pages in it, to begin with -- he
16 starts looking at the pages.

17 And then he says -- the question is: And where would
18 this book be kept in the house?

19 This book was kept at Jeffrey's desk, his desk, his
20 pool house, it was with Ms. Maxwell, it was in his bedroom.

21 "Q. Ms. Maxwell, what -- you're naming the locations where the
22 book was kept; correct?

23 "A. Yes, at Ms. Maxwell's desk."

24 And that's in Juan Allessi's testimony, the transcript
25 that I gave you, at 114 and 115.

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1 And then finally, your Honor, we have Rodriguez's
2 testimony, who is the deceased individual who took the book.
3 And he testified that Ms. Maxwell kept the book with the names
4 of the girls who would provide the massages.

5 And the question was: Did she keep them on a pad of
6 paper, did she keep them in a notebook, did she keep them in
7 her computer?

8 And he said, answer: We used to have internal books
9 for pilots, masseuses, chefs, so they would have a -- she would
10 have a copy of the black book with herself as well as on her
11 computer.

12 So that's from Rodriguez in the *Jane Doe 102* cases.
13 Of course he's deceased, so we couldn't depose him in this
14 case.

15 So, your Honor, I believe, in my view, that there is
16 definitely a plethora of witness testimony we can utilize to,
17 first, authenticate under 901, which, as you know, that burden
18 is not extremely high. The *Discenzi* case, which we cite, which
19 is a Second Circuit case from 2001, talks about the fact that
20 authentication is not a beyond-a-reasonable-doubt standard;
21 it's a standard for the reasonable juror to be able to say the
22 document is what it purports to be. This is a telephone
23 directory. It's got the names and numbers in it; it is what it
24 purports to be. So I think we clearly meet that hurdle, your
25 Honor.

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1 And then when we look at the exceptions, you mention
2 the business records exception. I believe that we can
3 establish through the testimony that this was a document that
4 the house staff used in order to contact these young girls,
5 contact other individuals that they socialized with, what have
6 you; it was kept in the course of their employment for purposes
7 of a telephone directory. So I believe it meets that
8 qualification under 803(6).

9 But, your Honor, there's a couple of others that I
10 want to point out to you.

11 I also believe that it's nonhearsay under 801(d)(2)
12 because it's an admission of Maxwell. She's admitted that this
13 is the stolen document. She's also admitted in her testimony,
14 because I asked her about some entries, there's the name of
15 Gwendolyn Beck, and that's in your binder as well. Gwendolyn
16 Beck is listed under the category that says "Florida Massage."

17 And so I asked her, Is she a masseuse?

18 And she said, No.

19 I said, Why is she there?

20 And she said, An input error, were her words.

21 So she also adopts the document in that she knows that
22 there were input errors in it; it was something they had at the
23 house that they utilized for contacting people.

24 I also think it falls within an exception that's not
25 regularly used, but it does address this issue, and that's

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1 803(17). That's a market reports and directories exception.
2 What that does it is says telephone directories have an
3 inherent exception to the hearsay rule because typically there
4 are not an immense amount of errors in them. They're phone
5 numbers with names; it's not a document that doesn't have
6 trustworthiness to it. So I think it falls under that
7 exception as well.

8 But as a fallback, I think this is the perfect type of
9 document for 807, which is the residual hearsay exception,
10 because it meets all four prongs of that test, your Honor. I
11 know that is not something that's often used, but the reason
12 for that exception is if you've got a document that is what it
13 purports to be and has the circumstances of trustworthiness
14 about it, it's an important piece of material evidence in the
15 case, it's probative on the point, and admitting it is in the
16 interest of justice. I think that's the fourth prong. I think
17 that's key here. Because we don't have Jeffrey Epstein
18 testifying about it.

19 If he takes the Fifth, I can't say, Was this the
20 record that you kept in your house for all your house staff to
21 use. It's in the interest of justice because this is something
22 that wasn't produced in this case; so I don't have it directly
23 from Maxwell's computer. But it is something that is what it
24 purports to be and should be admitted into evidence, your
25 Honor. So I believe it meets that exception.

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1 Finally, I just want to cover very briefly the fact
2 that it meets for nonhearsay purposes. So this document can be
3 admitted to show that on January 2nd, when Maxwell said my
4 client was lying about her claims of sexual abuse and
5 trafficking, that those claims were obvious lies; that she was
6 aware that this document existed. Even if the numbers in it
7 are wrong, even if there's a name in it that's incorrect, she
8 was aware that there was a document that had these categories
9 in it. For each of the houses there are lists of female
10 masseuses and things of that nature. Whether they're actually
11 masseuses is contested obviously, but there's a category for
12 those various places.

13 So we believe that it can be offered for that reason,
14 the nonhearsay reasons, to show the relationship between
15 Epstein and Maxwell, the fact that all of her family members
16 are listed in it, it's got other contact information that is
17 important to her personal world that's in that document. So we
18 believe it should be admitted for those reasons as well.

19 Your Honor, finally, I wanted to say if the concern is
20 over the handwriting on the first several pages of the
21 document -- and again, we did the handwriting expert really in
22 an abundance of caution so that we could be sure to get the
23 document into evidence -- we could just admit the piece of the
24 document that's the directory itself. So that would be another
25 option to bypass any concern to the extent there is concern

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1 over that.

2 THE COURT: The handwriting in the front, what is the
3 handwriting in the front?

4 MS. McCAWLEY: The handwriting in the front is Alfredo
5 Rodriguez's handwriting. He wrote out basically on the front
6 of the document the people that he thought were important in
7 this sex trafficking scheme. So he put the people that he
8 thought had important information.

9 THE COURT: So it's not really -- that's separate and
10 apart from the --

11 MS. McCAWLEY: The actual directory, yes, yes.

12 It was produced as an entire document; but the first
13 several pages, which is attached actually to their motion *in*
14 *limine* -- but there's an affidavit from the special agent
15 Christina Pryor in Florida that lays out what that is and the
16 fact that that document was the purchase document, the one that
17 he tried to sell.

18 THE COURT: That handwriting is a different issue than
19 the admission of the book.

20 MS. McCAWLEY: Yes. So, in other words, that's what
21 I'm trying to say; it could be separated. So we did it, again,
22 in an abundance of caution, because that's how we have the
23 document. The first, I think, six pages are the handwriting --

24 THE COURT: Let me ask you this.

25 MS. McCAWLEY: Sure.

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1 THE COURT: Does Rodriguez's testimony get in in this
2 case? I think not.

3 MS. McCAWLEY: That's a separate hearing, I think, in
4 two weeks, your Honor.

5 So there's a debate over that. There is testimony
6 from Rodriguez's testimony in the *Jane Doe 102* complaint -- or
7 case, I'm sorry, that we are trying to get into evidence.

8 THE COURT: Whatever the decision on Rodriguez's
9 testimony is, that portion, that handwriting portion, is going
10 to be the same issue, and that's not a black book issue.

11 MS. McCAWLEY: Right.

12 I think the issue can be separated is what I'm trying
13 to say.

14 THE COURT: Well, it is separate, is it not?

15 MS. McCAWLEY: Yes. I mean the directory itself could
16 be admitted into evidence, regardless of the --

17 THE COURT: No, but I mean there are two different
18 things. The directory is whatever it is; maybe it's a business
19 record or whatever. But his handwriting is not part of the
20 black book.

21 MS. McCAWLEY: Right.

22 The only reason we tied it is because what you're
23 probably going to hear from Mr. Pagliuca is they brought up
24 things like chain of custody, which I don't believe is at issue
25 here, but concerns over that. So we wanted to make sure that

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1 we had somebody who could say, This came from this source, and
2 you can tell -- if for no other reason, you can tell because
3 the handwriting matches up.

4 THE COURT: You mean you would want that handwriting
5 admitted not for the substance of what is being said, but
6 simply to identify that it's Rodriguez and Rodriguez had the
7 book.

8 MS. McCAWLEY: Exactly. Exactly.

9 The handwriting is not being put in for the truth of
10 whatever he was writing or anything of that nature. We only
11 did it, again, in an abundance of caution to say it matches up.
12 Because we can't bring him in here, because he's deceased. So
13 it matches up; this is what he took; this is the directory.
14 Again, Maxwell identified it.

15 THE COURT: All of that relates to the chain of
16 custody presumably.

17 MS. McCAWLEY: Right, which I think -- it does. But I
18 think that's a bit of a red herring because, again, we're not
19 talking about --

20 THE COURT: Well, I'm leaving aside Maxwell's
21 statement.

22 MS. McCAWLEY: Sure. Right.

23 We're not talking about cocaine being transported
24 where you would have a concern over the chain of custody and it
25 being what it is. It's the telephone directory. There's no

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1 question about that.

2 So, yes, your Honor. So we believe that it is
3 admissible. At a minimum, we'd like you to allow us to at
4 least try to present that at trial. If you have any concerns,
5 because we will, again, have the witnesses here, so we can
6 present additional testimony to the extent there is any
7 concern. But we do believe that that is a critical piece of
8 evidence that should be admitted and the jury should be able to
9 see.

10 Thank you, your Honor.

11 MR. PAGLIUCA: Your Honor, first let me start with the
12 Court set this for an evidentiary hearing today, which I
13 understood to mean that we were going to actually have some
14 evidence, which we don't. And it shouldn't be a do-over at
15 trial after we argue about all of this.

16 But I think it's important for the Court to understand
17 and put into context first what I will call the Alfredo
18 Rodriguez timeline.

19 By the way, your Honor, there's a response that I have
20 due tomorrow on this issue. I think there's a reply on this
21 issue as well that will be forthcoming. So the Court is going
22 to get additional briefing on this in the next few days.

23 First of all, your Honor, Mr. Rodriguez worked for
24 Mr. Epstein, as I understand it, in 2004 for a period of six
25 months. That testimony is reflected in Mr. Rodriguez's

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1 deposition testimony. I will give the Court those pages. So
2 we're talking about a short period of time in 2004 that
3 Mr. Rodriguez was actually part of Mr. Epstein's employ. I
4 bring that up because we are not talking about a long-term
5 trusted employee that would have any actual information about
6 anything.

7 After 2005, he works for someone else. Mr. Rodriguez
8 is first interviewed by the Palm Beach Police Department in
9 2006 and denies possessing any documents. He's then
10 interviewed by the FBI in 2007 and denies possessing any
11 documents.

12 In 2009, he is the subject of not one, but two
13 depositions in which he denies possessing any documents. Then
14 in August of 2009, Mr. Rodriguez contacts what the FBI refers
15 to as "CW." CW is one of the lawyers involved in the *Jane Doe*
16 cases, who I reasonably believe is Mr. Edwards, who's one of
17 the lawyers in this case, your Honor. And CW then contacts the
18 FBI; and the FBI sets up a sting operation to indict
19 Mr. Rodriguez.

20 If I can approach, your Honor, I'd like to talk a
21 little bit about the affidavit that I will tender as
22 Defendant's Exhibit 1 to this hearing.

23 Your Honor, this is the arrest affidavit as part of
24 the criminal complaint involving Mr. Rodriguez. This is
25 important, your Honor, in terms of this discussion because what

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1 you will see when you compare the description of the documents,
2 plural -- and the Court has already identified that as an issue
3 with what the plaintiff wants to proffer as evidence in this
4 case -- you will see that they are two different things.

5 In paragraph 6 of this document, your Honor, the
6 affiant, who's Special Agent Pryor, at the end of paragraph 6
7 says that the CW, who I believe is Mr. Edwards, explained this
8 conversation with Rodriguez. And according to CW, Rodriguez
9 explained that he, Rodriguez, not anyone else, had compiled
10 lists of additional victims in the case and their contact
11 information. Rodriguez explained that the information
12 contained hundreds of additional victims and their phone
13 numbers from diverse geographical locations, including New
14 York, New Mexico, and Paris, France. So the FBI is affirming
15 initially that Rodriguez is claiming that this is his document.

16 Then we go to paragraph 9 of this arrest warrant
17 affidavit, your Honor. The FBI has an undercover employee that
18 sets up the telephone conversation with Mr. Rodriguez, which is
19 recounted in paragraph 9. The undercover employee of the FBI
20 calls Mr. Rodriguez on October 29th, 2009, and Mr. Rodriguez
21 says he didn't turn this over before, because in the first
22 bracketed paragraph 1 at the end of paragraph 9, it was his
23 property and he should be compensated for it. So Rodriguez, to
24 the FBI, is claiming that this is his property, not something
25 that belonged to Epstein or anyone else.

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1 Then, your Honor, the next important part of this
2 document is paragraph 11 of this arrest warrant affidavit.
3 It's on page 4. This is on November 3rd, is the meeting
4 between Rodriguez and the undercover agent. And at that
5 meeting, the FBI says that Rodriguez produced a small bound
6 book and several sheets of legal pad paper containing
7 handwritten notes. So what they are describing here, your
8 Honor, is two separate items of evidence that they recovered
9 from Rodriguez, the first being these legal pad notations, and
10 the second being a bound book.

11 If I can approach now, your Honor, with Exhibit B to
12 this hearing. You have multiple copies of this, but I thought
13 it might be easier for discussion purposes if you had one when
14 we are talking about the actual document.

15 There are a couple of things, your Honor, that are
16 critically important about how this document appears, which
17 belies all of the assertions that were made by plaintiff's
18 counsel about this.

19 The first thing that I will point out, your Honor, is,
20 as you already noted, that the first what I have is five pages
21 of this document are handwritten and, according to the
22 plaintiff, it's by Mr. Rodriguez. When you look at the
23 substance of the handwriting in the first five pages, your
24 Honor, and if you go to page 5, in the middle of page 5, there
25 is -- first of all, there are a number of stars next to

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1 different names. But in the middle, there's a bracket. And it
2 says "important witness" there, your Honor.

3 THE COURT: I'm not --

4 MR. PAGLIUCA: Page 5. They are paginated at the
5 bottom of the document, your Honor.

6 THE COURT: Oh, yes, I see.

7 MR. PAGLIUCA: And they are double-sided.

8 THE COURT: Oh, yes, yes.

9 MR. PAGLIUCA: So if we look at page 5, we have this
10 bracket, "important witness," and then these names and phone
11 numbers. And then if you go down, there's another name at the
12 bottom of the page. And then it says, "Witness, interacted and
13 chat daily with underaged girls."

14 So this is clearly not a phone directory.

15 THE COURT: Excuse me. Where I'm looking at says
16 "important email/addresses."

17 MR. PAGLIUCA: That's at the top of the page.
18 Correct.

19 THE COURT: And then --

20 MR. PAGLIUCA: And then in the middle of the page
21 there's a bracket.

22 THE COURT: Oh, yes.

23 MR. PAGLIUCA: "Important witness."

24 THE COURT: I got you.

25 MR. PAGLIUCA: And then at the bottom of the page

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1 there's a description of a named person, "Witness, interacted
2 and chat daily with underaged girls."

3 So this document is prepared by Mr. Rodriguez in an
4 effort to make money in connection with these Jane Doe cases.

5 Now, here's what is also very curious and very
6 interesting about this document, your Honor, and this cannot be
7 lost in the shuffle here: The document in its entirety, your
8 Honor, is paginated 1 through 97. So here's the question: How
9 did those numbers get on this document, your Honor? When we
10 compare the description of what the FBI got to this document,
11 the FBI is describing handwritten legal pages and then a book.

12 THE COURT: It would appear, would it not, that the
13 book is what follows.

14 MR. PAGLIUCA: Well, one might think that, your Honor.
15 However, it's not paginated in this format when it's taken by
16 the FBI. And that's the point that I'm trying to make here,
17 that this document is paginated after the fact.

18 I know your Honor has done hundreds, if not thousands,
19 of criminal cases and involving the FBI. Your Honor knows, as
20 I do, for having done that kind of work, that when the FBI
21 takes something as evidence, they log it. And they are going
22 to log it in this case as two separate items, and it's going to
23 be produced -- if it gets produced as part of Rule 16 criminal
24 discovery, it's going to get produced exactly how it was
25 obtained by the FBI. And they describe what it looked like in

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1 this affidavit.

2 They do not describe what the Court has that was shown
3 to Ms. Maxwell as a complete Exhibit 13. This document has
4 never been referred to as anything other than some "black book"
5 prepared by Maxwell by the plaintiff. I think now they realize
6 the multitude of evidentiary problems with this. So now they
7 are trying to say, Oh, well, we take it back. It's not one
8 document; maybe it's two documents, because we want part of it.
9 But it's produced as one document here with 97 pages, which I
10 submit to you, your Honor, happened after the fact. Recall
11 that the FBI gets this document in 2009. The first time I ever
12 see it as part of this case, so in 2015, I'm supposing, is the
13 first time I see this.

14 What I want to switch to, your Honor, because I think
15 it becomes important, as well, this document has a lot of
16 unexplained problems with it.

17 So on the first page, if you look at the top, this is
18 the cover page of this document. You can see that there used
19 to be staples on the first page, because there are these little
20 black holes that look exactly like somebody removed staples and
21 then photocopied it. And then if you look at the fourth page
22 of the document, which also says "confidential," it looks like
23 staples have been photocopied over there at the top of the
24 page. And when you continue through the document, there are
25 all these odd-looking, what appear to be tabs that appear at

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1 the sides of the pages. For example, page 6, page 7, there are
2 these tabs that are sticking off the side that look like they
3 got photocopied that are unexplained, and randomly throughout
4 this document appear and disappear, making the entire content
5 of this document highly suspect, in my view.

6 When you further go through the document, there's
7 highlighting, there's underlining, there are brackets, there
8 are boxes. So all of this tells you that this document has
9 been manipulated, and I don't mean manipulated in a bad way;
10 it's changed over time, which leads me next to the chain of
11 custody.

12 THE COURT: What was shown to the defendant?

13 MR. PAGLIUCA: This document itself, your Honor,
14 exhibit -- this is Maxwell --

15 THE COURT: What I have in my hand?

16 MR. PAGLIUCA: Yes, the one you have in your hand,
17 Maxwell Exhibit 13. And you can see there's two stickers on
18 there, the Maxwell Exhibit 13, 4/22/16, and then my sticker as
19 well.

20 THE COURT: Oh, yes. I see. I see.

21 MR. PAGLIUCA: That's what was shown to my client.

22 THE COURT: Okay. Thanks.

23 MR. PAGLIUCA: So Mr. Rodriguez, your Honor, to
24 continue with this saga, he first gets arrested for this and
25 then pleads guilty on March 18th, 2010, to obstruction of

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1 justice. On the same day, the same day, March 18th, 2010, the
2 same day, he drives from the meeting with the undercover folks
3 to somewhere in Miami and gets arrested with a bunch of guns
4 when he's coming out of a house carrying guns. And the
5 arresting officers then go into his car and find the plea
6 paperwork from this plea. They then go to his house, they
7 search his house, and he ends up with somewhere in the
8 neighborhood of 84 guns and gets indicted under 18 U.S.C.
9 922(g), possession of a weapon by a convicted felon. So we
10 have a two-time now-convicted felon that is the seminal font,
11 according to the plaintiff, of this highly-reliable document.

12 In my view, this is a very curious transition here.

13 The plaintiff says in their papers that the document,
14 the document, whatever that is, goes from the FBI to
15 Mr. Rodriguez's criminal defense lawyer as part of the criminal
16 discovery; and then somehow Mr. Edwards ends up with that, and
17 then somehow that gets produced in this case. Well, that is
18 not a reliable chain of custody, your Honor. It vitiates any
19 business record exception or any other exception in the hearsay
20 rules, because no one knows what happened to this thing in
21 between 2009 and 2015, when it gets produced in this case. I
22 am not willing to accept plaintiff's representations on this as
23 to what it is or isn't. I've never had the opportunity to
24 question or cross-examine anybody about this document; it just
25 shows up in the course of this case. Mr. Edwards somehow got

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1 it and just trust us about the chain of custody here, which
2 does not match up with the FBI affidavit.

3 So let me now talk about what they claim is the
4 deposition testimony.

5 Your Honor, this is selective editorializing by
6 plaintiff's counsel about what these transcripts say. So I
7 would just like to tender to the Court, having gone through
8 these transcripts -- I tried, and I think I accomplished,
9 pulling out every reference to this document that I could find
10 in the Allessi, Rodriguez, and Maxwell deposition testimony.
11 And I hate to burden the Court -- well, it's not too much, but
12 we shouldn't have to be doing this. Unfortunately, you have
13 this selective ellipses on the actual testimony which ends up
14 making this very, in my view, disingenuous.

15 So Exhibit C, your Honor, is going to be Mr. Allessi's
16 testimony; Exhibit D is going to be Mr. Rodriguez's testimony;
17 and Exhibit E is going to be Ms. Maxwell's testimony.

18 So let me start, your Honor, with Ms. Maxwell's
19 testimony, which I believe is Exhibit E.

20 What I would like the Court to note is that, first of
21 all, what you have, Exhibit 13 in this hearing, Exhibit A, was
22 what was shown to Ms. Maxwell. There is no way that she could
23 have ever seen that document before, because as you've already
24 pointed out, the first five pages are handwritten and they are
25 handwritten, we assume, some time in circa 2009, if

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1 Mr. Rodriguez is to be believed. Mr. Rodriguez, who's there
2 for a brief time in 2004, we've already highlighted the fact
3 that he's said that he didn't have these documents for a number
4 of years after the fact. When she's asked about the document,
5 she is surmising that this is what she's referring to as the
6 stolen document. And when you go through that transcript, you
7 can see that she's asked directly by Ms. McCawley, "Do you know
8 how this book was created?" That's the question.

9 "A. No."

10 That's the transcript at 317, lines 21 through 23.

11 She's asked about the book again and she says: "I
12 have read that Alfredo stole the document."

13 That's what she says.

14 "I have read that Alfredo stole the document."

15 That's at page 330, lines 19 through 20.

16 Then she's asked: "Where did you read that?"

17 And she says: "I believe it was reported in the
18 press."

19 And that's at lines 22 and 23.

20 She's asked a question by Ms. McCawley: "So is
21 Alfredo Rodriguez telling the truth when he says he downloaded
22 that book from your computer?"

23 Which is another interesting sort of side turn here,
24 your Honor, because I'm a little unclear, frankly, reading the
25 papers, where the plaintiff says this book actually came from,

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1 because in parts of their papers they claim it was downloaded
2 from Ms. Maxwell's computer; in other parts of their papers
3 they claim that it was stolen from somewhere in one of the
4 houses. I don't think they know and they don't care. They
5 just want to say, We want this in and we don't care. And she
6 says she has no knowledge of anything coming off of her
7 computer, and it wouldn't have come off of her computer because
8 she didn't keep anything like whatever this is on her computer.
9 That's her testimony.

10 She says: "I don't know where this document came
11 from, so I can't possibly say this document was on any computer
12 that I may have had access to."

13 That's at transcript page 332, lines 8 through 11.

14 So that sort of rounds out the morass of the
15 questioning about what this questioning is. There's no way
16 Maxwell could know what it is because it's created by
17 Mr. Rodriguez after the fact. Anything that she says about it,
18 frankly, is just speculative.

19 Let me then turn to Mr. Allessi's testimony.

20 First of all, it's important to note that Mr. Allessi
21 was not employed in this time frame. Mr. Allessi, I believe,
22 left the employment of Mr. Epstein in 2001, late '1 or early
23 '02. So this is some two, three years after the fact. And
24 Mr. Allessi would have really no knowledge about what this is,
25 Exhibit 13, in Maxwell's deposition.

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1 When Mr. Allessi sees this document in the deposition,
2 your Honor, he looks at the pages and he says, "This is not my
3 writing. I never saw it." I never saw this, meaning this
4 exhibit, this exact same exhibit. That's in Mr. Allessi's
5 transcript at page 113, lines 20 through 21.

6 And then when he was talking about historical
7 information regarding how books, phone books, if you will, were
8 created, he said, "This book was changed. It would change
9 every year. It was sent from New York."

10 That's his testimony on the subject. I may not have
11 the exact cite on that, but it will be in my papers; it will
12 show up tomorrow, so you will get it. But that's his testimony
13 on this, your Honor.

14 And then Mr. Rodriguez, his testimony is very slim on
15 this and very confusing. But, in any event, you have the three
16 pages of Mr. Rodriguez, who really doesn't lay any evidentiary
17 foundation here, because what they are talking about here is
18 accessing information on a computer, not in any sort of a book.

19 So now let me turn to what I believe are some of the
20 real evidentiary issues in this case, your Honor.

21 First, let's talk about the authentication of this
22 document.

23 I recognize that there is a lower threshold for
24 authentication, but they don't have a witness, any witness, who
25 could come into this courtroom and say what this thing is,

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1 because it is a compilation document, apparently created by
2 Mr. Rodriguez, but I don't know that, that has clearly been
3 manipulated over the years, given the staple holes, the
4 different pages, the handwriting, and so there is no confidence
5 that this document is what they purport it to be, which is some
6 address book of Epstein's. And that's their burden. And their
7 burden is to produce a witness in this case that can actually
8 provide some form of reliable chain of custody, which they
9 cannot.

10 803(6). The law is very clear that in order to admit
11 a document under a business record exception to the hearsay
12 rule, we have to meet certain requirements, the first being
13 that whatever the document is, that it's kept in the ordinary
14 course of someone's business. Here, there is no evidence to
15 that. There is no author that has personal knowledge of the
16 matters that are represented in the book; there is no person
17 who can say that this information was transmitted by someone
18 with knowledge and kept in the regular course of
19 regularly-conducted activity; and that it was the practice of
20 someone to actually record that information. There's not one
21 person who will testify to that or has testified to that. So
22 they don't meet this standard.

23 In this case, it's clear that this document, the
24 document, and they call it the black book, well, it's neither
25 black nor a book, and let me make that point clear. This was

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1 prepared by Mr. Rodriguez trying to extort \$50,000 out of the
2 plaintiff's lawyers in the civil case. So there is no
3 regularly-conducted business activity that this document is
4 associated with; it's associated with a crime is what it's
5 associated with. And these kinds of documents that are
6 prepared by individuals for some other purpose are regularly
7 rejected as business records in this circuit and every other
8 circuit that has addressed this kind of an issue.

9 So then they turn to 801(d)(2). Again, this shows you
10 that they don't know what they are doing with this document,
11 the plaintiff and her lawyers, your Honor. Because when you
12 look at their notice of residual hearsay that they filed with
13 the Court, which is at docket entry 601, they claim in that
14 docket entry that Alfredo Rodriguez is the declarant for
15 purposes of this exhibit.

16 So why is that important, your Honor?

17 Well, first of all, they've represented to the Court
18 in their pleading, in their notice of residual hearsay
19 exception, that Mr. Rodriguez is the declarant. That, in my
20 view, is a judicial admission. You cannot take that position
21 in docket entry 601 and then say something else. In order for
22 something to be admissible as an admission under 801(d)(2),
23 well, guess what, the person you're admitting it against has to
24 be the declarant of the statement. They've already said that
25 Rodriguez is the declarant of this statement, so that leaves

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1 Maxwell out for any 801(d)(2) admission by law, by definition,
2 under Rule 801(d)(2).

3 And then they make a weak argument that somehow this
4 is an adoptive admission and there's no evidence to support
5 that. In order to make this an adoptive admission, Ms. Maxwell
6 would have had to direct someone to do it, have knowledge of
7 them doing it, somehow said, Oh, yeah, that's right. There's
8 no evidence of that before the Court. And, in fact, the
9 evidence is to the contrary. Ms. Maxwell repeatedly testified
10 at her deposition that she didn't have anything to do with
11 anybody entering in phone numbers or addresses or anything else
12 as part of this book. But, in any event, the declarant is
13 Rodriguez, according to the plaintiff in her pleadings.

14 803(17). I laughed when I read this in the papers.
15 This exception is for telephone books. Ma Bell didn't put
16 together this book, your Honor. So the notion that this is
17 something that is admitted under 803(17) is absurd and I'm not
18 going to spend anymore time on it.

19 Then finally, they argue the residual hearsay
20 exception. It's worth pointing out that when you flunk every
21 other admissibility test under the rules of evidence, you
22 probably have a real problem with circumstantial guarantees of
23 trustworthiness. Here, we have lots of problems with
24 guarantees of trustworthiness.

25 First, it's Mr. Rodriguez is creating this book to get

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1 50 grand out of the lawyers. So we start with a suspect motive
2 and purpose. This is Mr. Rodriguez, who has either lied two
3 times under oath saying he doesn't have this stuff, or
4 manufactured it after the fact. But, in any event, he's a liar
5 and a perjurer at that. He gets indicted not once, but twice,
6 and gets sentenced to 48 months in a federal penitentiary. So
7 that's the seminal fount of credulity that they are offering
8 this person, the declarant, Mr. Rodriguez, for this document.

9 I wonder about No. 2, what's the material fact that
10 this is being offered for. I haven't heard it. I've heard a
11 lot of noise. At the end of the day, what they really want is
12 this giant hearsay document from an unknown source and an
13 unknown origin that has all of these names in it that they can
14 then point to and argue off of and argue the truth of the
15 matter asserted during the course of the trial. It is, I
16 believe, irresponsible to admit this kind of a document without
17 any foundation for what's the purpose of this thing in the
18 course of this trial. Probative. Again, I don't know what
19 they are offering it for, so I'm questioning the probative
20 nature of this. But this is not a residual hearsay document,
21 given how it's been created.

22 Finally and sort of the last gasp of someone who can't
23 get in a piece of hearsay evidence, is, Well, we are not
24 offering it for the truth of the matter asserted. How many
25 times have you heard that, your Honor, from people who are

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1 trying to get in evidence that they don't have an evidentiary
2 foundation for. Well, they are clearly trying to offer it for
3 some truth of the matter asserted, otherwise it's not relevant
4 to any issue in this case. You're going to put in a 97-page
5 document, the first five pages of which are handwritten and
6 contain things like "important witness," star, star, star, and
7 say, Well, we are not offering that for the truth of the matter
8 asserted. Well, then what are you offering it for? I haven't
9 heard any precise evidentiary hypothesis that would support the
10 notion that this should be admitted for anything. And if it
11 were, the ability to create confusion with the jury and
12 prejudice in this case grossly outweighs any alleged nonhearsay
13 purpose.

14 Unless you have any other questions for me, your
15 Honor, that's all I have.

16 MS. McCAWLEY: Your Honor, I just have some brief
17 points in reply, if you would entertain them.

18 THE COURT: Sure.

19 MS. McCAWLEY: Thank you.

20 You've obviously heard a lot about Mr. Rodriguez,
21 because the defendants want you to focus on that, because
22 that's a distraction. You haven't heard them say, The names
23 and numbers in this book are not correct. Maxwell looked at
24 the exhibit during her deposition. She identified it. She
25 said, This is the stolen document. She knows it because they

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1 used it regularly at the house to call people. For goodness
2 sake, her veterinarian for her Yorkie is in there, okay; all of
3 her family members; every single house that they had that they
4 owned together. If you look at it, like, for example, on page
5 41 and 91, where each of the houses are listed, you'll see
6 Epstein's numbers, all of his various cell phones, and you'll
7 see Maxwell's numbers and all of her various things, right. So
8 there's no evidence that this is not what it purports to be, a
9 telephone directory.

10 We have already said that with respect to the
11 beginning pages that are handwritten, we don't need to admit
12 those. I'm frankly happy to not have those in. It's the
13 telephone directory that we're interested in here. And it does
14 have guarantees of trustworthiness. It has Maxwell
15 identifying.

16 They are saying no witness. Juan Allessi, who they
17 were entitled to cross-examine on this document during his
18 deposition, identified the document. We did put all of those
19 pages, by the way, your Honor, in the binder that I gave you.
20 I'd like to mark that as Plaintiff's Composite Exhibit 1. It
21 includes the document -- it's the black book. It includes
22 Maxwell's testimony, Juan Allessi's testimony, Alfredo
23 Rodriguez's testimony, your Honor, and all of the pages where
24 those were referenced. And we didn't clip them; they are all
25 in there.

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1 So, your Honor, if you look at that though, that's
2 what you're going to see; you're going to see Juan Alles
3 saying specifically in his testimony, this was the book. He
4 says, This book was kept at Jeffrey's desk, his desk at the
5 pool. It was with Ms. Maxwell. It was in his bedroom. He
6 identified the phone directory and said, I worked there; I was
7 the butler; this was the book; and this is where it was in the
8 house. So if they didn't cross-examine him on that, that's not
9 my problem. This is the book; it's the phone directory; it was
10 identified by staff who worked there, who has no incentive to
11 say it's something else. So, your Honor, that testimony is in
12 here with respect to that.

13 Now, also I want to point out that the affidavit of
14 Christina Pryor, that paragraph 13 is very important in that
15 affidavit because while they try to make a lot of fuss about
16 this trying to elude that this is not the book -- I'm sorry,
17 it's paragraph 11. In that affidavit she says, Rodriguez
18 explained that he had taken the bound book from his employer's
19 residence while employed there in 2004 to 2005; and that the
20 book has been created by persons working for his former
21 employer.

22 This is the telephone directory book. They are
23 identifying it right here. He's trying to say something about
24 pagination and, Oh, it looks photocopied and things of that
25 nature. Your Honor, what matters is that the evidence in the

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1 book, the names, the numbers, that information. Maxwell didn't
2 look at it and say, Oh, wait, that's not the book, because it
3 has -- at the very bottom there's a one, two, three, four, and
4 I don't recognize it. That's not what she said, your Honor.
5 And we should be entitled to put her on the stand, if that's
6 going to be their position, and get that information from her.

7 So, your Honor, what she did during her deposition was
8 identify it as the document that it is. So we believe that it
9 certainly comes in through her; it certainly comes in through
10 Juan Alessi and has been authenticated by them.

11 THE COURT: Clearly what she was shown was not the
12 book.

13 MS. McCAWLEY: No, that's not correct, your Honor.
14 What she was shown is Exhibit 13.

15 THE COURT: I'm saying, yes, but that's not the book;
16 it's a copy of the book.

17 MS. McCAWLEY: Yes, your Honor. You're correct. We
18 have a copy is what we have. You're correct. We don't have
19 anything that's bound; we have the copy that was produced in
20 discovery, that is correct.

21 But, your Honor, I will tell you, she didn't say, Oh,
22 those aren't the names and numbers of my family members on
23 pages 41, or that isn't what was the directory that we utilized
24 at the home. She said, That's the stolen document. I'd like
25 to know how you got it.

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1 So, your Honor, it's clear that --

2 THE COURT: But going to the probative use of this, it
3 is, in your view, probative that there is a record of her phone
4 numbers in Epstein's house, is that the point?

5 MS. McCAWLEY: That's one of the points, your Honor.
6 But more important is the section at page 91 which says
7 "Florida Massage." It has my client's number listed, who was
8 underage, it has witnesses that we are going to put on the
9 stand who were underage at the time they are listed in that
10 book. So it shows that they kept, as part of their sex
11 trafficking ring, a book that had phone numbers of a number of
12 people, but clearly had "Florida Massage," underage individuals
13 listed in that book.

14 So Maxwell has come forward in the international press
15 and said, You're a liar, Virginia Giuffre, because I didn't
16 sexually abuse you or sexually traffic you. So that book, this
17 phone directory, that they kept at their home with the names
18 and numbers of underaged people in it, is highly probative in
19 this case. First of all, it shows that Maxwell had knowledge
20 generally. Even if you don't put it in for the truth of the
21 fact that that person's name and number is what's represented,
22 she had knowledge of the fact that there were these sections
23 within the book. So, your Honor, it's highly probative in this
24 case. I believe it's a critical piece of evidence and it shows
25 she had knowledge that this information was there. It also

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1 shows, as you said, the relationship that they were together,
2 that they had all the contact information for one another
3 within this document. It also shows all of the other
4 individuals, many of whom are witnesses here, who are listed in
5 that book. So it's a directory that, for a number of reasons,
6 is probative in this case.

7 So, your Honor, with respect to that, we've set forth
8 the testimony. And particularly Juan Allesse who, again, is an
9 uninterested party because he was just simply the house staff,
10 and he identifies it, I read to you that portion at page 114.
11 There's also the portion where he says -- at 115 he says -- the
12 question is: Do you know whether the people within this book
13 are Jeffrey Epstein's friends, Ghislaine Maxwell's friends or
14 both, and he answers both. So that's Juan Allesse talking
15 about the substance of the book. He identifies it; he knows
16 what's in it; and he talks about the substance of the book.
17 And he was an employee at the home, your Honor.

18 With respect to 801(b)(2), the legal argument there,
19 it is an adoptive admission. So while Jeff tried to make a
20 fuss about the fact that the declarant -- okay. Sorry.

21 THE COURT: Nobody has testified that people listed on
22 that page, you say the critical page, were -- it's a copy that
23 has a listing. But nobody has testified that it is a copy of
24 the black book.

25 MS. McCRAWLEY: Yes, your Honor.

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1 Juan AlleSSI, who we're talking about right now -- and
2 that's the testimony that we elicited from him. We showed him
3 Exhibit 13, the entire document --

4 THE COURT: He did not -- well, you think his
5 testimony says, I know that this is a copy of what was on page
6 whatever of the black book.

7 MS. McCawLEY: For example, we show him the book. And
8 you'll see he says -- and we ask him what I just read: Do you
9 know whether the people within this book -- so we're showing
10 him the exhibit. Do you know whether the people within this
11 group are Jeffrey Epstein's friends, Ghislaine Maxwell's
12 friends, or both. And he says both.

13 How do you know that, we said.

14 Because these people I know; they were his friends;
15 they called; they came by the house, etc.

16 And then we went through some of the names with him in
17 the book. So we did identify the book and the names in the
18 book.

19 And, your Honor, at trial we are going to call
20 witnesses who are in the book and who will say, I was underage
21 at the time I was brought in. My name and number are listed
22 there.

23 THE COURT: That's a whole different thing.

24 MS. McCawLEY: If your concern is over identifying
25 whether the book is what it purports to be, there is witness

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1 testimony on that, both what I provided to you today and what
2 we'll be eliciting at trial.

3 So, your Honor, in conclusion, the book does have
4 guarantees of trustworthiness. This idea of a concern over a
5 chain of custody, again, Maxwell did not say that is not the
6 book; she said that's the stolen document from the home. She
7 identified it as being from Jeffrey's home. That testimony I
8 read to you earlier, I won't read it again, but it's very
9 clear, your Honor.

10 So we believe that this document definitely has
11 guarantees of trustworthiness. It is a directory. I know that
12 Jeff made a comment about 803(17), but there are reasons why we
13 have rules of evidence and there are reasons why they cover
14 certain topics. And that one does cover telephone directories,
15 because they have inherentness when they are kept in the course
16 of employment, which that addresses.

17 THE COURT: Yes. But clearly that doesn't work here.

18 Let me put it to you. If you have a case that has a
19 document like this that is in, I'd be pleased to see it.
20 Offhand, just without looking at any authority, I would say a
21 telephone directory is a telephone directory. And this isn't
22 Ma Bell, as your brother has indicated.

23 MS. McCAWLEY: I understand, your Honor.

24 So just in closing, I would like to reiterate that if
25 for some reason the Court does not find that it meets one of

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1 the exceptions that we put forward or it is nonhearsay, we
2 should be able to use it at trial to be able to say that
3 Ms. Maxwell was aware of this document at the time she made her
4 defamatory statement; not for the truth of the document itself,
5 but that she was aware of the document itself at the time she
6 made the defamatory statement.

7 So, your Honor, there are a number of nonhearsay
8 reasons why the document should be able to be presented to the
9 jury.

10 THE COURT: Well, but then you would have to have the
11 document admitted --

12 MS. McCAWLEY: Not for the truth. Of course in civil
13 discovery we do that often.

14 THE COURT: No, but you do want it for the truth;
15 because you're identifying people that --

16 MS. McCAWLEY: I understand. Yes, I would like to
17 admit it for the truth under the exceptions I've given you.

18 My fallback position is if you're not going to entitle
19 me to admit it for the truth --

20 THE COURT: What I'm trying to get at is I don't see
21 how you can use it not for the truth.

22 MS. McCAWLEY: Because I can use it not for the truth,
23 not that on page 41 lists Maxwell's family member. I can use
24 it for the fact that Maxwell knew this document existed,
25 whether it's true or not. Whether the numbers in it are

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1 correct, whether the names in it are correct, she knew that it
2 existed at the time she made the statements about --

3 THE COURT: You already have that testimony. You
4 already have her testimony that she was aware of a telephone
5 directory.

6 MS. McCAWLEY: Yes. And we should be able to elicit
7 that at trial, your Honor.

8 THE COURT: I don't think there's any question about
9 that. But I don't know how you're going to use the document
10 itself --

11 MS. McCAWLEY: To show --

12 THE COURT: -- without offering it for the truth.

13 MS. McCAWLEY: Your Honor, in the same manner as you
14 just discussed, to show her -- for example, if you say that it
15 cannot come in for the truth, which I think it should,
16 obviously, for all the reasons I've set forth today. But if
17 not, I can use the document with her on the witness stand, hand
18 her Exhibit 13, have her identify it, and ask her those
19 questions. So not for the truth of the matter asserted, but
20 whether she was aware of that document, its existence, at the
21 time she made the defamatory statement.

22 THE COURT: Okay. That you can do, no question about
23 that, because that's already been done. But then what happens
24 to the document?

25 MS. McCAWLEY: I'm not sure I follow.

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1 THE COURT: The document still hasn't gotten to the
2 jury; it hasn't been admitted. She knows there's a phone
3 directory.

4 MS. McCAWLEY: But my point is, your Honor, we should
5 be able to admit it into evidence, not for the truth, but to
6 show that there's a phone directory that she was aware of. In
7 other words, not the --

8 THE COURT: That there was a phone directory -- well,
9 all right. Okay. Enough is enough, I guess.

10 MS. McCAWLEY: Thank you, your Honor.

11 THE COURT: Okay.

12 Anything further from Ms. Maxwell?

13 MR. PAGLIUCA: No, your Honor.

14 THE COURT: Thank you, all.

15 MS. McCAWLEY: Thank you.

16 * * *