

Inner City Press

October 29, 2021

By E-mail

Hon. Alison J. Nathan, United States District Judge
Southern District of New York, 40 Foley Square, New York, NY 10007

Re: US v. Maxwell, 20-cr-330 (AJN), timely opposition to blanket requests to seal portions of motions in limine, trial exhibits, public access

Dear Judge Nathan:

On behalf of Inner City Press and in my personal capacity, I have been covering the above-captioned case. This concerns in the first instance the flurry of motions in limine filed earlier this evening, replete with redactions justified by a conclusory reference to *Lugosch v. Pyramid Co. of Onondaga*, 435 F.3d 110 (2d Cir. 2006).

The Government's Justifications for redaction (Docket No. 399, docketed at 10:06 pm on Friday Oct 29) cites *Lugosch* then says "The Government also seeks sealing of trial exhibits, which are not public." Inner City Press immediately opposes this.

As one example within this motions of limine, the Government has redacted the entirety of its Argument X, even the title and the page number. And as to trial exhibits, see for example Judge Jed S. Rakoff's order in *US v. Weigand*, 20-cr-188 (JSR) <https://www.documentcloud.org/documents/20536946-rakofforderonmrlicp>

There, Judge Rakoff ordered the US Attorney's Office to make trial exhibit available to the public at large. While this was done, belatedly, in *US v. Parnas*, it was refused in the current *US v. Cole*. It cannot be refused in this case.

Also, Inner City Press understands that the listen-only call-in telephone lines available so far in the case, there may be an attempt to discontinue them. The Court should take judicial notice of continuing COVID-19 issues, including people's understandable concerns about congregating even in so-called overflow rooms. Be aware that the District for the District of Columbia still allows public phone access to all criminal proceedings, even those held in-person. That should happen here.

The loss of First Amendment freedoms, even for a short period of time, unquestionably constitutes irreparable injury. *Elrod v. Burns*, 427 U.S. 347, 373 (1976).

Inner City Press: In-house SDNY: Room 480, 500 Pearl Street, NY NY 10007
E-mail: Matthew.Lee@innercitypress.com - Tel: 718-716-3540
Regular Mail: Dag Hammarskjold Center, Box 20047, New York, NY 10017

For further example, in Docket No. 387, all exhibits are withheld and the expected testimony of already anonymized Minor Victim-3 is redacted.

In Docket No. 382, Exhibits A through D, F, H and I are all withheld in full, and large portions of even the table of contents are redacted. How is the public to access the basis for withholding, when even the titles / subjects are withheld?

The First Amendment to the U.S. Constitution guarantees to the public a right of access to court proceedings. U.S. CONST. AMEND. I; *Globe Newspaper Co. v. Superior Court*, 457 U.S. 596, 603 (1982). The public's right of access is strongest when it comes to criminal proceedings such as these, which are matters of the "high[est] concern and importance to the people." *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 575 (1980) (plurality opinion).

If deemed necessary, PLEASE TAKE NOTICE that Inner City Press and its undersigned reporter, in personal capacity, will move this Court before Honorable Alison J. Nathan, U.S. District Judge for the Southern District of New York, at a date and time directed by the Court, for entry of an order granting permission to be heard on unsealing the improperly redacted submission in this case, on public access to trial exhibits and to the provision of access, during COVID-19 and beyond, by listen-only audio line.

Non-parties such as Inner City Press and myself have standing to intervene in criminal proceedings to assert the public's right of access. *United States v. Aref*, 533 F.3d 72, 81 (2d Cir. 2008).

Please confirm receipt and docket this timely responsive filing, making Inner City Press an Interested Party, and thank you for your attention to it as you make logistical arrangements for the trial.

Respectfully submitted,

Matthew Russell Lee, Inner City Press

cc: Alison.Moe, Maurene Comey at DOJ; Counsel Sternheim and Everdell