

# Inner City Press

December 9, 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), third timely opposition to sealing and withholdings including of witness lists and trial exhibits, public access call-in amid Omicron, docketing

Dear Judge Nathan:

On behalf of Inner City Press and in my personal capacity, I have been covering the above-captioned case. This concerns the over-redaction of exhibits in this case, the withholding in full of the witness list and, again but on new facts, the exclusion of some of the public by the denial of the twice-requested listen-only call-in line.

While appreciating that the Court docketed before denying Inner City Press' November 12 request for a call-in line, Dkt. 451, since then travel restrictions to New York have been imposed on entire countries, including some visited by Jeffrey Epstein's plane, with defendant Maxwell aboard, in their tour of Africa with former President Clinton and others.

That is, some impacted people could not access the courtroom and its overflow rooms, due to Omicron and US response. Also, this morning Inner City Press received an email from a former police official who long worked on the Epstein and Maxwell investigation who stated among other things, "Without your live tweeting, I would know little of what is occurring in the Ghislaine Maxwell trial and imagine that is also the case for hundreds of Epstein survivors. I am very grateful for your efforts and echo your thoughts on the secrecy of the trial. The lack of public access and over-redaction of evidence, images and identities is shocking."

While due to delayed docketing a comprehensive challenge to the redactions and withholdings is not possible even now, as the Government prepares to rest its case, the redaction of all or nearly all passenger names from Epstein's plane trips with the defendant is inconsistent with the case law on "otherwise publicly available" information. Similar logs were already published, from civil case court files and should not be redacted in this case.

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While appreciating the Court's oral ruling that the witness lists are not judicial documents as no judicial action was sought, Inner City Press would argue that there is much public interest in this case, where the Government has announced a significant truncation or shortening of its case, in knowing what witnesses were proposed and subpoenaed. (Significantly, the above-quoted police official was not subpoenaed and thus, as noted in his email to Inner City Press, is free to follow what is said, and to communicate about it.)

Finally, for now, even as this brief letter is being prepared, the defense has been allowed to submit an exhibit under "temporary seal," without the Court setting any deadline for the defense to docket a redacted version. This should be done, in this case and all others going forward.

Formally, this is a Press request that the filings be further unsealed consistent with *Lugosch v. Pyramid Co. of Onondaga*, 435 F.3d 110 (2d Cir. 2006) and other applicable case law. This is a request that this opposition to sealing be docketed as, for example, took place in *US v. Avenatti*, 19-cr-374 (JMF), Dkt 85, see <https://storage.courtlistener.com/recap/gov.uscourts.nysd.516151/gov.uscourts.nysd.516151.85.0.pdf>

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).

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. That has not been done in this case.

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 including its Omicron variant and attendant travel restrictions, 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 (see eg in this case, Dkt 363 and 451), making Inner City Press an Interested Party (as was done in Dkt 362), and thank you for your attention to it as you continue to make logistical arrangements for the trial.

Respectfully submitted,

/s/

Matthew Russell Lee, Inner City Press

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