

# Inner City Press

December 19, 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), fourth timely opposition to further denying public access to closing argument exhibits (and 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 joint letter submitted or docketed earlier this afternoon, asserting that "the public interest in viewing the parties' presentations is marginal." This statement is not only inaccurate but insulting.

During this trial, stated concerns with the privacy of victims / survivors has been used to withhold or redact other information including about possible co-conspirators (for example, the redactions to the flight logs).

Additionally the Court should be aware, and should docket, that unlike in other SDNY trials such as US v. Weigand before Judge Rakoff, no provision for availability of defense exhibits has been made. See, e.g., [https://www.courtlistener.com/docket/17048479/united-states-v-weigand/?filed\\_after=&filed\\_before=&entry\\_gte=&entry\\_lte=&order\\_by=desc#entry-250](https://www.courtlistener.com/docket/17048479/united-states-v-weigand/?filed_after=&filed_before=&entry_gte=&entry_lte=&order_by=desc#entry-250) & <https://www.documentcloud.org/documents/20513316-icpunsealweigandjsrorder>

Likewise, the last upload to USAfx by the Government was ten days ago. This amid 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. Restrictions and cases are growing in New

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York, but still no call-in line. By contrast, on December 17 Judge Richard J. Sullivan provided a call-in line for an in-person criminal proceeding.

Meanwhile, in this case, "the Government is willing to provide printed versions of a redacted version of its slides before the summation begins to members of the public in attendance, so they can follow along during the summation" -- only to those "in attendance." As noted, some cannot be in attendance.

A public call-in line should be provided for the summations, as Inner City Press has been requesting throughout this trial, and even before.

While appreciating the Court's oral ruling that the witness lists are not judicial documents as no judicial action was sought, Inner City Press argues 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.

The implication that only documents on which the Court acts should be put in the docket is one that we oppose. The public has a right to know what the Court is NOT acting on, in this case.

Formally, this is a Press request that the presentations in closing arguments be made available in real time, and 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