

L71CgiuC

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

3 VIRGINIA L. GIUFFRE,

4 Plaintiff,

5 v.

15 CV 7433 (LAP)

6 GHISLAINE MAXWELL,

7 Defendant.

Telephone Conference

8 -----x  
9 New York, N.Y.  
10 July 1, 2021  
11 11:00 a.m.

12 Before:

13 HON. LORETTA A. PRESKA,

14 District Judge

15 APPEARANCES

16 BOIES SCHILLER & FLEXNER LLP  
Attorneys for Plaintiff

17 BY: SIGRID S. McCAWLEY  
ANDREW VILLACASTIN  
SABINA MARIELLA

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

19 BY: JEFFREY PAGLIUCA

20 HOLLAND & KNIGHT  
Attorneys for Intervenors Julie Brown and Miami Herald  
21 Media Company

22 BY: CYNTHIA A. GIERHART

23 KRIEGER KIM & LEWIN, LLP  
Attorneys for John Doe Defendants

24 BY: PAUL M. KRIEGER  
NICHOLAS LEWIN

L71CgiuC

1 THE COURT: Good morning, everyone. It's so nice to  
2 be able to see you.

3 MS. MCCAWLEY: Good morning, your Honor.

4 THE COURT: All right. May we begin, my friends.

5 Today, the Court announces its rulings on the  
6 unsealing of the motions associated with docket entries 345,  
7 356, 362, 370, 422, 468, and 640 in *Giuffre v. Maxwell*, as well  
8 as the documents relevant to those motions.

9 As before, the Court will announce its general  
10 findings relevant to this round of unsealing, marching through  
11 each specific findings on each document.

12 In arriving at these findings, the Court has  
13 considered the papers filed by Ms. Maxwell at docket number  
14 1208, the responses filed by Ms. Giuffre at docket number 1213,  
15 by the Miami Herald at docket number 1214, and Ms. Maxwell's  
16 reply brief at docket number 1215.

17 The Court, of course, has undertaken its own  
18 particularized review of each of the documents.

19 As for the Court's general findings to determine  
20 whether materials should be unsealed, the Court must undertake  
21 a particularized review of each document and, one, evaluate the  
22 weight of the presumption of public access to the materials;  
23 and two, identify and evaluate the weight of any countervailing  
24 interests; and 3, determine whether the countervailing  
25 interests rebut the presumption. The presumption of public

L71CgiuC

1 access attaches to the access of judicial documents, that is  
2 those documents filed in connection with a decided motion or  
3 papers that are relevant to the Court's exercise of its  
4 inherent supervisory powers.

5 As with the last round of unsealed materials, the  
6 documents at issue here, unless otherwise mentioned, were  
7 submitted in connection with discovery motions decided by Judge  
8 Sweet. The parties and nonparties dispute whether certain of  
9 the documents at issue today are judicial documents.

10 First, docket number 422 and the materials filed in  
11 connection with that motion are not judicial documents.  
12 Ms. Maxwell submitted that motion to compel production of  
13 Ms. Giuffre's settlement agreement with Mr. Epstein. Judge  
14 Sweet never decided that motion. Instead, the parties briefed  
15 the motion and, while oral argument was pending, submitted a  
16 joint stipulation resolving the motion. As the so-ordered  
17 stipulation notes, it, quote, "rendered the need for any  
18 further proceedings on it moot," close quote. Accordingly, the  
19 presumption of public access does not attach to the documents  
20 submitted in connection with the motion at docket number 422.  
21 To the extent those materials are filed under seal, they will  
22 remain so.

23 The remainder of the motions at issue today are  
24 discovery motions, and Judge Sweet actually decided them.

25 Ms. Maxwell argues that not every document filed in

L71CgiuC

1 connection with a decided motion is automatically granted the  
2 presumption of public access, and she's right. The Court of  
3 Appeals has observed that filed motions are judicial documents  
4 if they, quote, "would reasonably have the tendency to  
5 influence the district court's ruling on a motion or in the  
6 exercise of its supervisory powers," close quote. *Brown v.*  
7 *Maxwell*, 929 F.3d 41, 49 (2nd Cir. 2019). Ms. Maxwell points  
8 out in her reply brief that Judge Sweet stated that certain,  
9 quote, "documents sealed in the course of discovery were  
10 neither relied upon by the Court in the rendering of an  
11 adjudication nor, single quote, 'necessary to or helpful in  
12 resolving a motion,'" close both quotes. Maxwell reply at 3,  
13 citing *Giuffre v. Maxwell* 325 F.Supp.3d 428, 442,  
14 (S.D.N.Y. 2018)). This finding is not synonymous with the  
15 standard for determining whether a filed paper is a judicial  
16 document, however. Indeed, the Court of Appeals has noted that  
17 such a determination is made "without regard to which way the  
18 Court ultimately rules or whether the document also in fact  
19 influences the Court's decision." See *Brown*, 929 F.3d 41, 49  
20 (2nd Cir. 2019). Having undertaken a particularized review of  
21 each of these motions and their associated submissions, the  
22 Court concludes that each document at least reasonably had the  
23 tendency to influence the Court's ruling on the motions at  
24 issue and is thus a judicial document. As the Court has noted  
25 before, however, the presumption of public access is somewhat

L71CgiuC

1 less weighty than for dispositive motions. It is,  
2 nevertheless, important to the public's interest in monitoring  
3 federal courts' exercise of their Article 3 powers. The Court  
4 keeps this somewhat less substantial public presumption in mind  
5 in determining whether it is outweighed by any private  
6 interests in sealing.

7 As to the countervailing interests proffered,  
8 Ms. Maxwell has argued previously that continued unsealing of  
9 these materials implicates her right to a fair trial in her  
10 pending criminal case. She has incorporated these previously  
11 made arguments by reference in her briefing of the motions at  
12 issue today. She also asserts that media coverage of unsealed  
13 documents has not served the purpose of, quote, "monitoring the  
14 federal courts," but rather has generated adverse publicity and  
15 online commentary. Here, the Court reiterates its prior  
16 ruling, rejecting Ms. Maxwell's argument that the unsealing of  
17 any of the materials under consideration today – with the two  
18 exceptions I will note as we proceed – will jeopardize her  
19 right to a fair trial, let alone sufficiently enough to  
20 overcome the presumption of public access that attaches to  
21 these materials. Moreover, although certain materials  
22 contained within the unsealed documents may have provided  
23 tabloid fodder, it does not diminish the importance of making  
24 public materials that could reasonably tend to influence the  
25 Court's decision on a motion.

L71CgiuC

1           Now, Ms. Maxwell also argues that the Court should not  
2 unseal exhibits and other documents that have already been made  
3 public, because re-releasing already-publicly-available  
4 documents serves no public access interests, but that gets the  
5 standard backwards. Where an exhibit is a judicial document  
6 the presumption of public access attaches. The Court need not  
7 find additional reason to unseal a presumably public document.  
8 It must find additional private interests only to justify  
9 sealing, even if continued sealing maintains the status quo.  
10 But where an identical exhibit has been made public already,  
11 there cannot be cause for continued sealing. See *Gambale v.*  
12 *Deutsch Bank A.G.*, 377 F.3d 133, 144, note 11 (2nd Cir. 2004).  
13 ("This is generally so when information that is supposed to be  
14 confidential, whether it be settlement terms of a  
15 discrimination lawsuit or the secret to making the hydrogen  
16 bomb is publicly disclosed. Once it is public, it necessarily  
17 remains public.")

18           The Court is mindful of the fact of the parties and  
19 media observing these proceedings may not as be as intimately  
20 familiar as the parties to the litigation with the thousands of  
21 documents that have been filed in connection with this lawsuit.  
22 Because materials may have been previously unsealed by this  
23 Court and separately by the Court of Appeals on its docket,  
24 it's not always clear when documents ordered unsealed contained  
25 materials that would be available publicly for the first time.

L71CgiuC

1 The Court's job is simply to weigh any private interests  
2 against the public's right of access to judicial documents.  
3 And, as I have just stated, there is rarely a scenario when  
4 there is sufficient cause to continue sealing materials on the  
5 docket where those materials are already public. It's not the  
6 job of the Court to police press coverage and alert the public  
7 when reporting on unsealed materials as yesterday's news when  
8 the unsealed material is already public.

9 As for the names and identifying information of  
10 nonparty Doe's.

11 At this stage, unless otherwise noted, the only Doe's  
12 for whom names and identifying information should be unsealed  
13 are Doe's 1 and 2 for the reasons indicated on the record of  
14 the January 19, 2021 conference.

15 Additionally, as before, Alan Dershowitz's name and  
16 information identifying him may be unsealed. As you know by  
17 his letter at docket entry 1138, he has requested that  
18 redactions of his name in these materials be unsealed in all  
19 the cases.

20 For efficiency as before, I won't repeat this caveat  
21 as to each document, I will only comment on it when it's not  
22 applicable. Unless there is a specific comment, personal  
23 identifying information for all nonparty Doe's should be  
24 redacted, with the exception of Doe's 1 and 2, professor  
25 Dershowitz, and in deposition testimony already unsealed by the

L71CgiuC

1 Court of Appeals.

2 Now, let's get ready and march through the specific  
3 findings on the documents that are at issue in this motion to  
4 unseal. As always, these findings are resolved of the Court's  
5 particularized review of each document it has considered for  
6 unsealing today. As before, the Court will proceed in the  
7 order of the documents listed on the chart that the parties  
8 have so helpfully provided listing their respective positions  
9 for each document. The chart is Exhibit F to Ms. Menninger's  
10 declaration, filed with Ms. Maxwell's reply brief in support of  
11 her objections to unsealing at docket number 1167-2. So here  
12 we go.

13 Docket number 345, motion to compel defendant to  
14 produce documents, et cetera, et cetera. Unseal this  
15 consistent with docket entry 135.

16 Docket number 344 was not sealed.

17 Docket number 346, Ms. Schultz's declaration, and  
18 exhibits 1, 2, and 3 should be unsealed. So that's four  
19 documents, 346, 346-1, 346-2, 346-3. 346-4 was unsealed by the  
20 Second Circuit. 346-5 shall be unsealed as it was at docket  
21 entry 135.

22 Docket number 383, the response in opposition to the  
23 motion, we will redact the Doe's we have not gotten to  
24 consistently with docket entry 135.

25 Docket 384, Ms. Menninger's declaration in opposition,



L71CgiuC

1 we'll redact the names and identifying information of the  
2 nonparty Doe's. Docket number 384-1 has been unsealed.

3 Docket number 385, 386 shall be unsealed.

4 387 is not sealed.

5 397, unseal as it is at docket number 135.

6 Docket number 398, Ms. McCawley's declaration,  
7 paragraph 7, which references a nonparty Doe, shall remain  
8 sealed, otherwise it may be unsealed. Docket number 398-1,  
9 398-2 shall be unsealed. 398-4, unsealed as previously done.  
10 398-5 shall remain sealed, this relates to a Doe.

11 356, Same ruling as in docket entry 315.

12 357, same ruling as docket entry 316. 357-1, same  
13 ruling as docket 316-1. 357-2, same as docket entry 316-2.  
14 357-3, same as docket entry 316-3. 357-4, same as docket entry  
15 316-4. And there is a pattern here. 357-5, 6, 7, 8, all as  
16 with the prior rulings in docket entries 316-5, 6, 7, and 8.

17 367, Ms. Schultz's declaration, same ruling as in  
18 docket entry 316. Similarly, 367-1, 2, 3, 4, and 6, same  
19 rulings as at docket entry 316-1, 2, 3, 4, 5, 6, and 7. I'm  
20 sorry, 367-7, same ruling as 316-7. Same with 367-8, same  
21 ruling as 316-8. 367, same ruling as the prior ruling.

22 369, same ruling as the prior ruling. 369-1, 2, 3, 4,  
23 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, and 16, same as the  
24 corresponding rulings in the prior round.

25 362 was not sealed, already public.

L71CgiuC

1           363, unsealed. 363-1 was unsealed by the Second  
2 Circuit. 363-2, same ruling as in the prior round. 363-7,  
3 same ruling as in the prior round. 363-13, but for  
4 Mr. Dershowitz's name, the other Doe's should remain sealed.

5           364, 382 shall be unsealed.

6           406, redact the names of Doe's we haven't gotten to  
7 yet.

8           407, same thing, redact the names of Doe's we haven't  
9 gotten to yet. 407-1, 2, 3, 4, 5, 6 shall be unsealed. 407-6,  
10 partially unsealed by the Second Circuit, so, of course, all  
11 the Doe names shall remain sealed. 407-7, unseal. 407-8  
12 remains sealed. 407-9 should remain sealed because of the  
13 nonparty Doe's. 407-10, what should remain sealed are the  
14 nonparty Doe's. Of course, as we've said before, Detective  
15 Recarey may be unsealed. 407-11, unseal. 407-12, 13, 14, 15,  
16 16, 17, 18 - 19 wasn't sealed - 20, 21, 22, and 23 shall all be  
17 unsealed.

18           408, nonparty Doe names should remain sealed. 408-1,  
19 this is portions of the deposition transcript of Paul Cassell,  
20 this will remain sealed. It mentions various Doe names, but  
21 more seriously, it marshals evidence in a manner that might be  
22 prejudicial to a fair trial for Ms. Maxwell, so this document  
23 will remain sealed for those reasons. 408-2, 3, and 4 shall be  
24 unsealed.

25           435, the nonparty Doe names shall be redacted. 435-1,

L71CgiuC

1 2, 3, 4, 5, 6, 7, 8, 9, and 10 were not sealed, and accordingly  
2 should be unsealed.

3 436 was not sealed, shall be unsealed.

4 445 was not sealed, so should be unsealed.

5 447, unseal.

6 370, unseal.

7 371, unseal. 371-3, we will delete the email  
8 addresses and the telephone numbers and otherwise unseal.

9 388, this is the response in opposition to motion 370.  
10 It's filed by Ms. Dufrey (ph). Pages 12 to 13 of this document  
11 where the redactions are already noted, together with footnotes  
12 5 through 9, also marshal evidence that might prejudice  
13 Ms. Maxwell's right to a fair trial, and accordingly, that  
14 material shall remain redacted.

15 389, any nonparty Doe's should remain sealed. 389-1  
16 previously required to remain sealed because the mention of  
17 Doe's. 389-2, remain sealed. 389-3, unsealed on remand from  
18 the Court of Appeals. 389-4, remain sealed. 389-5, the  
19 nonparty Doe's shall be unsealed, and, as always, Detective  
20 Recarey's testimony, but for the redactions, may be unsealed.  
21 389-6, unsealed by the Court of Appeals. 389-7 has been  
22 unsealed. 389-8 has been unsealed. 389-9, to the extent that  
23 this information was released publicly by law enforcement  
24 agencies, it may be unsealed.

25 404, unseal.

L71CgiuC

1           405, unseal. 405-1, unsealed, but redact the nonparty  
2 Doe's names.

3           Now we're up to a motion at docket entry 422. That's  
4 the one that I have previously ruled is not a judicial document  
5 because it was not decided by Judge Sweet. So the following  
6 documents shall remain sealed.

7           422, 423, 423-1, 423-2, 423-3, 423-4, and 437.

8           468, delete or keep sealed the email addresses and the  
9 names of the nonparty Doe's, otherwise release.

10          469, unseal, except for paragraph 4 that references a  
11 nonparty Doe. 469-1 was previously unsealed. 469-2 relates to  
12 a nonparty Doe, it will remain sealed. 469-3 will remain  
13 redacted in the same manner as docket entry 1137-13.

14          479, redact the email addresses and, of course, redact  
15 Mr. Alessi (ph).

16          480, maintain the seals as to the nonparty Doe's.  
17 480-1, redact the email addresses and otherwise unseal. 480-2,  
18 same thing, unseal but for the email addresses. 480-3 has  
19 previously been unsealed and will remain as it was at docket  
20 entry 1137-13. 480-4, unseal.

21          490, unseal, except for the email addresses.

22          491, unseal. 491-1, not sealed anyway. 491-2,  
23 unseal. 491-3 and 491-4, unseal.

24          640, keep this sealed because of its relation to a  
25 nonparty Doe.

L71CgiuC

1           641, same ruling. 641-1 has already been unsealed.  
2 641-2, keep sealed.

3           We are going to, because of the subject matter of the  
4 following documents relating as they do to nonparty Doe's, the  
5 following shall remain sealed, and we're going right through to  
6 the end.

7           Docket number 641-2, 655, 656, 656-1, 2, 3, 4, 5, 6,  
8 7, 8, and 9.

9           Docket number 700, 701, 701-1, 701-2, 707, 709, 714,  
10 715, 715-1, and 715-2 all shall remain sealed.

11           Counsel, as always, I'll ask you to confer and to  
12 prepare the documents for unsealing pursuant to the findings  
13 just made. This is not an exercise that needs to be undertaken  
14 on the long Independence Day weekend, so nobody has to start  
15 until after the end of the long weekend. So I think, probably,  
16 we can do this two weeks from today. Is that acceptable to you  
17 folks? Plan on unsealing then?

18           MS. MCCAWLEY: Yes, your Honor, that is acceptable.

19           MR. PAGLIUCA: Yes, your Honor, on behalf of  
20 Ms. Maxwell.

21           Your Honor, I did have two questions related to two  
22 documents, and I may have misheard the Court, but I just want  
23 to clarify.

24           THE COURT: All right, go ahead, counsel.

25           MR. PAGLIUCA: I did not hear any ruling related to

L71CgiuC

1 docket 444, which I have on my list.

2 THE COURT: What number document is it, please,  
3 counsel?

4 MR. PAGLIUCA: Yes. 444, your Honor.

5 THE COURT: That's the docket entry. Tell me what  
6 number document it is on our list. I'm told that it is 110.  
7 Unseal is the answer.

8 MR. PAGLIUCA: That's what I thought, but I didn't  
9 hear anything.

10 Your Honor, I don't have those other numbers handy,  
11 but in reference to docket number 389-5, I heard the Court say  
12 nonparty Doe's to be unsealed, and I just want to make sure, my  
13 assumption is that your ruling is consistent with your other  
14 rulings, and that is with the exception of nonparty Doe's 1 and  
15 2, Dershowitz and Recarey, the remaining nonparties Doe's are  
16 to be sealed?

17 THE COURT: Correct. I undoubtedly misspoke.

18 MR. PAGLIUCA: I don't know if you misspoke or I  
19 misheard. I just want to make sure we're all on the same page,  
20 your Honor.

21 THE COURT: Okay. Anybody else?

22 MR. LEWIN: Judge, this is Nick Lewin for nonparty  
23 Doe. May I briefly address one issue now, your Honor?

24 THE COURT: Sure.

25 MR. LEWIN: Your Honor ruled obviously today and

L71CgiuC

1 before that with certain exception you've noted, Doe names and  
2 identifying information that remains sealed, so it's that  
3 latter term, identifying information, I wanted to very briefly  
4 address with your Honor.

5 In the past, I think there have, perhaps, been some  
6 questions about whether the redactions that the parties alone  
7 applied were sufficient to prevent identification of a nonparty  
8 Doe. So, your Honor, we would just request that, respectfully,  
9 your Honor make clear to those that are doing these redactions  
10 carrying out your Honor's order that identifying information  
11 that should be redacted, in addition to names, includes  
12 anything about that nonparty Doe that would identify her or him  
13 or could reasonably lead a person to identify that nonparty  
14 Doe.

15 THE COURT: I think that's clear. If, for example,  
16 the entry said Doe with purple hair and three arms, the purple  
17 hair and three arms would probably allow someone to identify  
18 who that Doe was. Of course that should be redacted. And  
19 maybe, Mr. Lewin, if you want to confer offline with counsel to  
20 assist, that's fine, too. I thought we had understood what  
21 identifying information is.

22 If you are unsatisfied with your discussions with  
23 counsel and you want to put something in under seal, that's  
24 fine, but you have to do that soon so that counsel is able to  
25 prepare the documents for two weeks from now. All right.

L71CgiuC

1 MR. LEWIN: Yes, Judge. I don't expect that we will  
2 put anything in nor do I think we need to coordinate with  
3 counsel. Of course the three arm, purple hair example is one,  
4 but there is ample public information about relationships  
5 between people and the like that, if not redacted, could cause  
6 a nonparty Doe, other than those you've dealt with, to be  
7 accepted.

8 Your Honor, I think the record is clear, I don't think  
9 there is much more that needs to be done, and I appreciate you  
10 indulging that brief request.

11 THE COURT: We've all seen things in the public press  
12 and the public press in the materials before us. We know we  
13 can pick out some people we might be talking about, but I think  
14 we all understand what we're doing here.

15 All right. I just wanted to observe, friends, we have  
16 gone through hundreds of documents already and ruled on them,  
17 and we're just continuing to go back. If any of you wants to  
18 say I told you so, you're welcome to go ahead and do it. We  
19 might want to start thinking about another way to proceed to do  
20 it more quickly. For example, it might be that it would be  
21 useful to consider all the folks from whom we have received  
22 objections at one time. I don't know if that's possible or  
23 feasible, but I'll ask you folks to confer among yourselves and  
24 in maybe three weeks, let me know if you have a suggestion  
25 about how to move through more quickly. I think we all know



L71CgiuC

1 now pretty much how it's going to go, and my own view is  
2 perhaps it might be useful for us if we don't do just the Doe's  
3 we received objections from, another thing we might do is  
4 categorize the Doe's, because there are Doe's who are alleged  
5 to be victims, there are Doe's who we've read about in the  
6 tabloids, and then there is a whole bunch of other Doe's and we  
7 might want to do rulings on those people in bunches. But would  
8 you be kind enough to talk among yourselves and give me some  
9 thoughts on how we might speed the process.

10 Anything else today, counsel?

11 Mr. Reporter, do you anything?

12 (Pause)

13 Wonderful. Counsel, nice to see you. Happy  
14 Independence Day.

15 \* \* \*