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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

-----x

3 [REDACTED]

4 Plaintiff,

5 v.

15 CV 7433 (LAP)
Remote Zoom Conference

6 GHISLAINE MAXWELL,

7 Defendant.

8 -----x

9 New York, N.Y.
10 July 23, 2020
11 11:30 a.m.

12 Before:

13 HON. LORETTA A. PRESKA,

14 District Judge

15 APPEARANCES

16 BOIES, SCHILLER & FLEXNER, LLP
Attorney for Plaintiff
BY: SIGRID S. MCCAWLEY

17 HADDON, MORGAN, AND FOREMAN, P.C.
Attorney for Defendant
18 BY: LAURA A. MENNINGER

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1 (The Court and all parties appearing via Zoom)

2 THE COURT: Are we ready to begin or is there anyone
3 else we're waiting for? OK.

4 So let's begin. I wanted to start out by thanking
5 counsel for organizing the docket entries by motion, by Doe, by
6 pinpointing the references to the Does and the like. It was
7 exceedingly helpful to the Court and really a model of making
8 it easy for the Court.

9 My law clerk is on the call and I'm going to invite
10 him to correct me if I make any mistakes in going over charts
11 when we go document by document.

12 To remind us where we are in the process of unsealing
13 materials from [REDACTED] v Maxwell, the Court is to:

14 One, evaluate the weight of the presumption of public
15 access to the materials;

16 Two, identify and evaluate the weight of any
17 countervailing interests; and

18 Three, determine whether the countervailing interests
19 rebut the presumption.

20 The Court acknowledges that the presumption of public
21 access attaches to judicial documents, that is, to documents
22 filed in connection with a decided motion or to papers that are
23 relevant to the Court's exercise of its inherent supervisory
24 powers. The documents at issue here relate to discovery
25 motions previously decided by Judge Sweet, and so the Court

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1 concludes that they are judicial documents to which the
2 presumption of public access attaches. Because the motions are
3 discovery motions, the presumption is somewhat less weighty
4 than on a dispositive motion but is nevertheless important to
5 the public's interest in monitoring federal courts' exercise of
6 their Article III powers.

7 The motions at issue today mention Does 1 and 2, the
8 first long line of nonparties mentioned throughout the sealed
9 materials. Pursuant to the protocol set out in docket
10 no. 1044, these individuals were given notice of the motion to
11 unseal and given the opportunity to request the material that
12 pertains to them and to object to its unsealing. Neither Doe
13 requested the material or lodged an objection to unsealing.
14 The Court notes that the names of Does 1 and 2, portions of
15 their deposition transcripts, and portions of the Palm Beach
16 police report ascribed to them have already been made public.
17 Also, Doe 1 gave a press interview about the subject matter of
18 this action.

19 Also pursuant to the protocol, the parties were
20 permitted to comment on the motion to unseal, and defendant
21 Maxwell has lodged objections to unsealing. In her objections,
22 Ms. Maxwell relies on several countervailing interests, the
23 most weighty of which are that the material concerns personal
24 matters that, if released, might lead to annoyance or
25 embarrassment, that the material was abusively filed or is

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1 untrustworthy, and that the material concerns the subject of a
2 criminal investigation.

3 With respect to the argument that the material
4 constitutes personal information which might lead to annoyance
5 or embarrassment if unsealed, Ms. Maxwell proffers little more
6 than her ipsi dixit; she provides no specifics as to these
7 conclusions. In her first deposition, which is among the
8 documents being considered on this motion, Ms. Maxwell refused
9 to testify as to any consensual adult behavior and generally
10 disclaimed any knowledge of underage activity. In the context
11 of this case, especially its allegations of sex trafficking of
12 young girls, the Court finds that any minor embarrassment or
13 annoyance resulting from disclosure of Ms. Maxwell's mostly
14 nontestimony about behavior that has been widely reported in
15 the press is far outweighed by the presumption of public
16 access.

17 With respect to the argument that the material was
18 abusively filed or is untrustworthy, again, Ms. Maxwell
19 proffers few specifics. That some of the exhibits to the
20 motion papers might not have been technically required on the
21 motion does not make the papers abusively filed. That
22 Ms. Maxwell's lawyers did not cross-examine some of the
23 witnesses relied on does not make the witnesses' testimony too
24 unreliable to be unsealed. In any event, the Court is dubious
25 that such a fine-toothed comb review is required to evaluate

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1 the public interest in access to these papers. Thus, the Court
2 finds that these interests are entitled to little weight under
3 the facts of this case.

4 Finally, that the material relates to a person now
5 known to be under criminal investigation, Ms. Maxwell, is not
6 entitled to much weight here. Again, Ms. Maxwell has relied on
7 ipsi dixits and has not explained how the sealed material, if
8 released, could, as she posits, "inappropriately influence
9 potential witnesses or victims." Again, the Court finds that
10 this interest is entitled to little weight under the facts of
11 this case.

12 As should be clear from the above, the Court finds
13 that the countervailing interests identified fail to rebut the
14 presumption of public access to the motions at issue and the
15 documents filed in connection with those motions. Accordingly,
16 those papers shall be unsealed.

17 The Court also notes that several of the documents
18 sealed on these motion papers have already been made public,
19 and so those documents will not be discussed.

20 Also, personal identifying information as to any
21 person mentioned in the documents and the names of nonparties
22 other than Does 1 and 2 and other portions related to such
23 nonparties' specific conduct will be redacted from the
24 materials being unsealed. Disclosure of the additional
25 nonparty names will await notice to those parties and an

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1 opportunity for them to be heard.

2 I won't repeat this caveat as to each document but
3 will only comment when it is not applicable. So unless there's
4 a specific comment, personal identifying information should be
5 redacted and the names of the other Does not yet identified.

6 Consistent with the protocol, the Court will now
7 announce its findings with respect to the sealed documents
8 relating to Does 1 and 2 that are the subject of this motion to
9 unseal. For ease of reference, as counsel knows, the Court
10 will proceed in the order of the documents listed on Exhibit A,
11 that is docket no. 1068-1.

12 Docket entry 143. Plaintiff's motion to compel
13 defendant to answer deposition questions. Unseal subject to
14 the caveat which I won't keep saying.

15 144. Plaintiff's declaration of Ms. McCawley in
16 support of the motion. Unseal.

17 144-1. Exhibit 1. Page 21 of Ms. Maxwell's April 22,
18 2016 deposition. Unseal.

19 144-2. Additional pages of Ms. Maxwell's April 22,
20 2016 deposition. Unseal.

21 Same thing for 144-4.

22 Same thing for 144-5.

23 Same thing for 144-6.

24 Same thing for 144-7.

25 149. Defendant's response to the motion. Unseal.

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1 150. Declaration of Mister -- how does he say it,
2 Mr. Pagliuca? Say it again.

3 MS. MENNINGER: Pagliuca.

4 THE COURT: Mr. Pagliuca in opposition to the motion
5 to compel. Unseal.

6 150-1. Additional pages from Ms. Maxwell's April 22,
7 2016 deposition. Unseal.

8 152. Plaintiff's reply memorandum of law on the
9 motion. Unseal.

10 153. Ms. McCawley's declaration in support of the
11 motion to compel. Unseal.

12 I'm sorry. I'm going to go back to 152 for a minute.
13 Unseal the portions summarizing Doe 1's public statements.
14 Those appear on page 6. Unseal portions summarizing deceased
15 nonparties' public statements. Page 6. OK.

16 Continuing on. 153-1. Additional deposition
17 excerpts. Unseal.

18 164. Defendant's motion to compel all attorney-client
19 communications and work product put at issue by plaintiff and
20 her attorneys. Unseal.

21 165. Declaration of Ms. Menninger in support of that.
22 That can be unsealed in full because there are no -- there is
23 no material within the caveat in the document.

24 165-3. Exhibit C. This is a copy of a motion to join
25 in Jane Doe 1 and Jane Doe 2 files in court. That document is

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1 already public.

2 165-8. Excerpts from Ms. [REDACTED] deposition taken
3 in the Dershowitz matter on January 16, 2016. Unseal.

4 165-10. Copy of e-mail correspondence. Unseal.

5 165-11. Excerpts from Ms. [REDACTED] deposition,
6 May 3, 2016. Unseal.

7 184. Plaintiff's response in opposition to the
8 motion. Unseal the portions relating to Does 1 and 2 which
9 appears on page 3.

10 185. Ms. McCawley's declaration in opposition. That
11 can be unsealed in full because there is no material included
12 in the caveats in the document.

13 185-2. Copy of Jane Doe's no. 3 and 4 corrected
14 joinder motion. Already filed in public.

15 185-3. Response to the motion to intervene. Already
16 filed in public.

17 185-11. Various deposition excerpts from
18 Ms. [REDACTED] deposition. The pages unsealed by the Second
19 Circuit should, of course, remain unsealed.

20 185-13. It's a copy of Ms. [REDACTED] May 30, 2016
21 affidavit. That can be unsealed in full.

22 185-14. Copy of deposition excerpts from Mr. Cassell.
23 Unseal.

24 185-15. Copy of a transcript of the Scarola/Edwards
25 interview of April 7, 2011. Unseal in full. The document is

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1 already public

2 185-16. Copy of common interests agreement. Unseal.

3 194. Ms. Menninger's declaration in support of the
4 motion to compel. Unseal in full.

5 194-3. Excerpts of Ms. [REDACTED] May 3, 2016
6 deposition. Unseal.

7 172. Plaintiff's motion to exceed the presumptive ten
8 deposition limit. That may be unsealed. Obviously subject to
9 the caveat.

10 173. Ms. McCawley's declaration in support. Unseal

11 173-5. May 18, 2016 deposition transcript of Doe 162.
12 Pages released by the Second Circuit, of course, will remain
13 sealed -- will remain unsealed. Let me say it again. The
14 pages unsealed by the Second Circuit, of course, remain
15 unsealed and further unsealing awaits notice.

16 173-6. Excerpts from Ms. Maxwell's April 22, 2016
17 deposition. Same thing. Pages unsealed by the Second Circuit
18 remain unsealed. The portions of the deposition relating to
19 Does 1 and 2 which appear pages 71, 72, 73, and 218 shall be
20 unsealed.

21 189. Response in opposition to the motion. Unseal
22 everything except for the reaction -- I'm sorry, the redaction
23 on page 5 pending further nonparty notice.

24 190. Ms. Menninger's declaration in opposition. That
25 can be unsealed in full.

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1 190-1. Excerpts from Ms. [REDACTED] deposition taken
2 on May 3, 2016. Unseal everything except for the inadvertently
3 included letter on page 2.

4 203. Response in support of the motion. The portions
5 relating to Does 1 and 2 which appear at pages 2, 5, and 6 may
6 be unsealed.

7 204. Ms. McCawley's declaration in support. Unseal.

8 204-1. Doe no. 162's deposition transcript. The
9 pages unsealed by the Second Circuit will, of course, remain
10 unsealed and the remainder of the document remains sealed until
11 notice to the nonparty.

12 204-2. It's Doe no. 151's rough deposition transcript
13 excerpts. The pages unsealed by the Circuit will remain
14 unsealed. The remainder will await notice to that Doe.

15 204-3. Deposition of John Doe 1. Unseal in full.

16 211. That's the reply to the motion. The portions
17 mentioning Does 1 and 2 which appear at pages 2, 5, and 6 may
18 be unsealed.

19 212. Ms. Schultz's declaration in support of the
20 motion. The portions mentioning John Does 1 and 2 which appear
21 at page 2 may be unsealed.

22 212-1. Doe no. 162's deposition transcript excerpts,
23 pages unsealed by the Circuit will remain unsealed.

24 212-2. Doe 151's final deposition transcript
25 excerpts. The pages unsealed by the Circuit will remain

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1 unsealed

2 212-3. Doe 1's deposition transcript excerpt. Unseal
3 in full

4 222 -- I'm sorry. 224. It's the reply on the motion.
5 The portions relating to Does 1 and 2 which appear at page 2
6 may be unsealed.

7 199. That's a motion for an extension of time to
8 complete depositions. That's open in any event.

9 228. The response in opposition to the motion.
10 Unseal.

11 229. Ms. Menninger's declaration in opposition.
12 Unseal.

13 221 -- 229-1. Excerpts of the deposition of Doe
14 no. 151. Hold until notice to that Doe.

15 229-2. The billionaire playboy's club book
16 manuscript. The pages unsealed by the Circuit will remain
17 unsealed.

18 229-4. Excerpts of plaintiff's deposition of May 3,
19 2016. Unseal the pages released by the Circuit.

20 229-10. This is correspondence released in the case
21 between Ms. Maxwell and Jeffrey Epstein from January 2015.
22 Unseal in full.

23 229-11. Notices of deposition and a subpoena for Doe
24 84 -- Will, I can say these two names, right?

25 THE LAW CLERK: Yes, Judge.

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1 THE COURT: Joe Recarey and Michael Reiter together
2 with a letter of production from Ms. McCawley. Unseal in full.

3 248. Reply memorandum of law in support of the
4 motion. We're going to await the notice to the Doe on that
5 one.

6 249. Ms. McCawley's declaration in support of the
7 motion. Unseal in full.

8 249-4. Ms. McCawley's correspondence with opposing
9 counsel. The portions relating to Does 1 and 2 which appears
10 at pages 4 and 5 can be unsealed.

11 249-13. Defendant's Rule 26 disclosures. The
12 portions relating to Does 1 and 2 shall be unsealed.

13 249-14. Ms. Schultz's correspondence with opposing
14 counsel. Unseal.

15 249-15. Same. Same.

16 230. Defendant's motion to reopen the deposition of
17 plaintiff [REDACTED] It may be unsealed. However, the
18 information currently redacted in the document relating to
19 plaintiff's medical history shall remain redacted for obvious
20 reasons.

21 235. Ms. Menninger's declaration in support of the
22 motion. Unseal.

23 235-4. The deposition of Ms. [REDACTED] The pages
24 released by the Second Circuit of course remain unsealed. The
25 portions relating to Doe 1 and 2 which appears -- which appear

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1 at pages 122, 126, 134, and 138 shall be unsealed.

2 235-5. Ms. Menninger's declaration. The medical
3 records on pages 5 to 12 should remain sealed; otherwise,
4 unseal.

5 235-6 are medical records. They shall remain sealed.

6 235-7. Excerpts from the -- a deposition of Doe
7 no. 131. That will remain sealed pending notice to the Doe.

8 235-8. Production letters from Ms. Schultz to
9 Ms. Menninger. The exhibits will remain sealed.

10 235 -- and they are medical records.

11 235-9. Excerpts from the May 26, 2016 deposition of
12 Dr. Stephen Olsen. The material relating to plaintiff's
13 medical issues shall remain sealed. The other material in the
14 deposition, for example, how the doctor takes notes, how the
15 doctor gets new patients, how the doctor writes prescriptions
16 and that sort of thing may be unsealed.

17 235-10. Production letters from Ms. McCawley to
18 Ms. Menninger. Unseal.

19 235-12. The June 1, 2016 errata sheet relating to
20 Ms. [REDACTED] deposition. Unseal.

21 235-13. Plaintiff's third revised disclosure pursuant
22 to Federal Rule 26. Unseal.

23 260. Ms. McCawley's declaration in opposition to the
24 motion. The redactions which are medical information will
25 remain.

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1 260-1. Will, is this only the authorization or is it
2 the authorization plus material?

3 THE LAW CLERK: Judge, I believe it's the
4 authorization on the first two pages and then the medical
5 records on subsequent pages.

6 THE COURT: Thank you. The medical record
7 authorization may be unsealed. The subsequent pages which
8 constitute medical records will remain sealed.

9 260-2. Dr. Lightfoot's June 27, 2016 correspondence.
10 That may be unsealed.

11 267. The reply on the motion. The information
12 relating to plaintiff's medical history shall remain sealed.

13 268. Ms. Menninger's declaration in support of the
14 motion. Unseal.

15 268-1. Pages from plaintiff's medical records. They
16 shall remain sealed.

17 268-2. Excerpts from the deposition of Doe no. 67.
18 The pages unsealed by the Second Circuit will remain sealed --
19 I'm sorry, will remain unsealed and the remainder of the
20 document will remain sealed pending notice to the relevant
21 Does.

22 Counsel, I will ask you to confer and to prepare the
23 documents for unsealing pursuant to this order and post the
24 documents within a week on the docket sheet as documents
25 unsealed pursuant to the Court's order of July 23 or something

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1 like that.

2 Counsel, do you have any questions?

3 MS. MENNINGER: Your Honor, on behalf of Ms. Maxwell I
4 would ask if we could have the opportunity for a brief stay in
5 order to seek relief in the Second Circuit. There is not a
6 certain mechanism for doing that in an unsealing context but I
7 know that the Brown Court at the conclusion of their opinion
8 stated their intent for that panel to maintain jurisdiction
9 over this case for purposes of any appeals taken from an
10 unsealing order and so we would ask for two weeks, if we could,
11 to seek relief in the Second Circuit.

12 THE COURT: Ms. McCawley.

13 MS. McCAWLEY: Yes, your Honor. We obviously believe
14 that the material should be unsealed as quickly as possible so
15 we would prefer to obviously have the material unsealed.

16 MS. MENNINGER: Your Honor, if I may briefly, to add
17 to my record. While I understand and respect the Court's
18 ruling, there have been some significant changes with respect
19 to my client's position since we concluded briefing. In
20 particular, and perhaps known to everyone listening to this,
21 while we were speaking about a potential ongoing criminal
22 investigation at the time we submitted our brief, since that
23 time Ms. Maxwell has been indicted and a trial has been
24 scheduled for next July in another courtroom in the Southern
25 District. So while we were not able to provide specifics

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1 necessarily with regard to what witnesses might be relevant to
2 any such criminal trial, now we are in a vastly different
3 position and certainly have great concerns about our client's
4 ability to seek and receive an impartial and fair trial and
5 jury given the intense media scrutiny around anything that is
6 unsealed or anything that happens in this or any of the related
7 cases. So while we -- your Honor had mentioned at the
8 beginning of this ruling that there was a lack of specifics on
9 the front of the pending criminal investigation, I think there
10 may be the ability to provide a lot more specifics about that
11 at this time and certainly I think it's an issue that we would
12 like to, if we may, have a brief amount of time to submit. It
13 is important either to this Court's analysis or to the Second
14 Circuit.

15 THE COURT: So what are you asking me for?

16 MS. MENNINGER: Your Honor, I ask for two weeks if we
17 could to file an emergency appellate motion in the Second
18 Circuit and ask them to stay any further release.

19 THE COURT: I will give you a week to file the motion.
20 In the meantime I will still ask counsel to confer and to
21 prepare the papers for release. If the Court of Appeals has
22 not ruled on your motion in a week, then you can let me know.

23 (Court reporter dropped off the call; called back in
24 and read record to the point where call dropped)

25 THE COURT: After that, I asked counsel to confer

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1 generally along the outlines of the proposal in Ms. Maxwell's
2 letter of April 3, docket no. 1045 to propose the next
3 chronological set of motions to be considered for unsealing. I
4 also asked counsel to confer on ways to make the process more
5 efficient, less time consuming, and to make it stretch out or
6 over a shorter time period. For example, it occurs to me we
7 could shorten the briefing time. We could reduce the number of
8 pages of briefing, for example, to ten pages each side total or
9 something like that. I'll ask counsel to confer and to report
10 back within a week.

11 Finally, going forward, as you all saw, Exhibit A to
12 Ms. [REDACTED] motion -- I said the number of it earlier but
13 that was exceedingly helpful. If you would like to propose a
14 joint exhibit similar to that as we go forward with everybody's
15 positions, I would welcome it.

16 Is there anything else you want to ask, counsel?

17 MS. McCAWLEY: No, your Honor.

18 MS. MENNINGER: No, your Honor. Not from Ms. Maxwell.

19 Thank you.

20 THE COURT: Thank you and I'll just tell you lawyers
21 again how useful the work you did in organizing the docket
22 entries was. Thank you for it again.

23 MS. MENNINGER: Thank you, your Honor.

24 THE COURT: Good afternoon, counsel. Thank you.

25 MS. McCAWLEY: Good afternoon. Thank you. (Adjourned)